CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1947

No. 50

INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, PETITIONER

vs.

ROAD MAGAZINE, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED MARCH 7, 1947
CERTIORARI GRANTED APRIL 21, 1947

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 50

ROBERT E. HANNEGAN, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, PETITIONER

vs.

READ MAGAZINE, INC., ET AL

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1 IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISRICT OF COLUMBIA

Civil Action No. 30926

READ MAGAZINE, INC., LITERARY CLASSICS, INC., AND PUBLISHERS SERVICE COMPANY, INC., HENRY WALSH LEE, AND JUDITH S. JOHNSON, 75 WEST STREET, NEW YORK, N. Y., PLAINTIFFS

v.

ROBERT E. HANNEGAN, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, PENNSYLVANIA AVENUE, BETWEEN 12TH AND 13TH STREETS, NW., WASHINGTON, D. C., DEFENDANT.

[File endorsement omitted.]

Complaint for injunction

Filed Oct. 2, 1945

1. Plaintiff, Read Magazine, Inc. is a corporation organized and existing under the laws of the State of New York, having its principal office and place of business at 75 West St., New York, N. Y. Said plaintiff is now, and during all other times herein mentioned was, primarily engaged in the business of editing and publishing a magazine called "Read" and a magazine called "Facts." Plaintiff is a subsidiary of Publishers Service Company, Inc.

2. Plaintiff, Literary Classics Inc., is a corporation
2 organized and existing under the laws of the State of New York, having its principal office and place of business at 75 West Street, New York, N. Y. Said plaintiff is now, and during all other times hereinafter mentioned was, primarily engaged in the business of editing, publishing and selling books of classical literature. Said plaintiff is a subsidiary of Publishers Service Company Inc.

3. Plaintiff, Publishers Service Company is a corporation organized and existing under the laws of the State of New York, having its principal office and place of business at 75 West Street, New York, N. Y. Said plaintiff is now, and during all other times hereinafter mentioned was, primarily engaged in the business of promoting the circulation of newspapers, the sale of books and magazines published by its subsidiaries, and the sale of phonograph records manufactured by its subsidiary.

4. Plaintiff, Henry Walsh Lee is the editor of "Read" and "Facts" magazines, is Vice President of plaintiff, Read Magazine Inc., and a Vice President of Publishers Service Company Inc.

5. Plaintiff, Judith S. Johnson, is an employee of Read Maga-

zine Inc. and is the Contest Editor of the "Hall of Fame" contest hereinafter described.

6. Defendant is the duly appointed, confirmed, and qualified Postmaster General of the United States, with offices on Pennsylvania Avenue between 12th and 13th Streets Northwest, Washington, D. C.

3 7. This action is brought to enjoin defendant from enforcing a so-called "fraud order" issued by him under purported authority of Title 39 U. S. C., Sections 259 and 752 (Sections 3929 and 4041, Revised Statutes, as amended) directing the Postmaster at New York, N. Y., to stamp fraudulent and return to senders all mail addressed to plaintiffs, their officers, and agents as such, and further directing postmasters throughout the United States to refuse to certify or to pay any money orders payable to the order of plaintiffs.

8. The matter in controversy between plaintiffs and defendant exceeds, exclusive of interest and costs, the sum or value of $3,000 and arises under the constitution and laws of the United States as hereinbefore and hereinafter set forth.

9. Publishers Service Company Inc. (hereinafter referred to as Publishers) has, for a number of years, engaged in the promotion of circulation of newspapers and magazines and sale of books and phonograph records published or manufactured by its subsidiary companies.

Publishers is the leading circulation promotion company in the newspaper field. It has conducted approximately 150 contests for the principal American newspapers for the purpose of promoting their circulation. Many of such contests essentially resemble the contest hereinafter described, which was sponsored by

4 "Facts" magazine and plaintiff Literary Classics, Inc. and promoted by Publishers. In addition to promoting the circulation of newspapers Publishers, through its subsidiaries, publishes books and magazines, and manufactures phonograph records which it has sold directly at retail or in connection with sales promotion contests.

10. In April 1945 "Facts" magazine and Literary Classics, Inc., sponsored the so-called "Hall of Fame" contest and offered same to the public through national newspaper advertisement in more than 300 American newspapers and in booklets on newsstands throughout the United States. Its avowed purpose, as stated in its announcement, is a means of popularizing the Literary Classics Book Club, organized by Literary Classics, Inc., which is a subsidiary of Publishers.

11. Plaintiffs, as sponsors and promoters of the "Hall of Fame" contest, offered the contest to the public with a first prize of $10,000 and 499 other prizes totaling $17,500 to the winners of the contest.

A typical copy of the announcement and the published rules is attached hereto as Exhibit A and made part hereof. The rules of the contest printed in said Exhibit A provided in substance:

(a) A group of 80 rebus puzzles was offered for solution (Rule 2).

(b) The 80 puzzles submitted for solution were divided into 20 series of 4 puzzles each (Rule 4).

5 (c) Each series of puzzle solutions submitted was required to be qualified by the remittance of 15 cents in coin (Rule 8).

(d) Solutions so qualified for the 20 series of puzzles (80 puzzles) were required to be postmarked and mailed to the sponsor not later than June 16, 1945 (Rule 5).

(e) In case of ties in the solution of the 80 puzzles, a first and if necessary, a second tie-breaking Group of puzzles divided into series exactly like the first Group, were provided for. In case a second tie-breaking Group of puzzles should be necessary contestants were required to accompany their solutions with a letter on the subject "The Puzzle I found Most Interesting and Educational in This Contest" (Rule 9).

(f) Only in case ties exist after the final tie-breaker will the letter be considered. All tie-breaking series of solutions were required to be qualified by the remittance of 15 cents in coin with each series of four solutions (Rules 9 and 8).

12. To prevent misunderstanding on the part of contestants regarding the probable length of the contest or the amount which might be required to be paid for participation therein the sponsors made the following assertion in Rule 9 of the official rules of the contest:

"Upon entering the contest, the entrant is asked to realize that the sponsor anticipates that a large number of persons may enter the contest and that a large number may solve one, two or all three of the Groups of puzzles. * * *"

13. A total of 189,650 persons entered the contest. Of this number 100,315 lost out by failing to submit solutions to all of the Group of 80 puzzles. Of the 89,335 persons remaining in

6 the contest approximately 53,501 submitted solutions to the 80 puzzles but failed to solve the 80 puzzles correctly and thereby lost out and were eliminated. Each of these received, as promised by the rules, a book published for the month of July by the Literary Classics Book Club. The book was a special Literary Classic's edition of "The Way of All Flesh," by Samuel Butler. The entire typography was designed and set especially for this edition, and new original copyrighted material was written for this edition by Carl Van Doren, Burton Rascoe, and Robert Van Gelder. End papers and illustrations were

created for the edition by William Sharp. In every respect the book fully justifies the retail price of $3 at which it is sold.

14. From the field of 189,650 entrants in the contest approximately 35,834 persons submitted correct solutions to the 80 puzzles and were therefore qualified to compete in the first tie-breaker. Participants in this first tie-breaker who submitted solutions to the 80 puzzles therein provided for whether correct or incorrect, have received the August book published by the Literary Classics Book Club. That book is "Pride and Prejudice," by Jane Austen. This book, like "The Way of All Flesh" heretofore described, is an especially designed edition with new copyrighted introductory matter, new typography and new illustrative material and in every way, justifies the retail price of $3 at which it is sold.

7 15. About 1,400 of the original entrants in the contest were delinquent in sending in their solutions to the puzzles and were eliminated from the contest. Refunds of all remittances were mailed to such persons. From the standpoint of percentages, 81% of the people who entered the contest have been eliminated or have lost out by failure either to submit or to solve all the Group of 80 puzzles.

16. Notification was mailed to approximately 35,834 persons (19% of the field of entrants) who submitted correct solutions to the 80 puzzles. This notification informed the contestants that they have correctly solved the 80 puzzles and that they thereby became eligible to compete in the tie-breaker, but each contestant was advised that the mere fact that he had succeeded in solving the puzzles in the contest did not mean that he had won a prize or that he would win a prize. A copy of said notification is attached hereto as Exhibit B and prayed to be read and considered as part hereof. In conjunction with the announcement to the contestants who had successfully solved the 80 puzzles the sponsor offered to double the original prize if the contestant would purchase the four books of the Literary Classics Book Club to be issued, beginning with the month of October 1945, or to increase the original prizes by 50% if the contestant would purchase the two books of the Literary Classics Book Club beginning with the book for October 1945.

8 17. The contest has reached the stage where the solution to the first tie-breaker have been received and have been checked.

18. The approximately 54,000 contestants who lost out by failing to solve the 80 puzzles correctly were offered a consolation contest, with entirely separate prizes, these 500 added prizes totaling $17,500 and being confined exclusively to the approximate 54,000 persons who had been eliminated from any opportunity to win a prize in the original contest by virtue of their failure to

solve the 80 puzzles correctly. The puzzles used for the consolation contest were the tie-breaking puzzles designed for the original contest. All rules of the original contest applied to the new consolation contest except that the entrants in the consolation contest all started fresh with the first tie-breaking group of puzzles. The opportunity to win double the amount of the prizes by purchasing continuing memberships in the Literary Classics Book Club was offered to entrants in the consolation contest. Approximately 26,000 persons entered the consolation contest. Of this number, 13,725 lost out by failing to solve the puzzles, and there now remain approximately 12,250 persons who are eligible to compete in the final tie-breaking puzzles which have not yet been issued. A total of $35,000 in prizes will be paid to the winners among these 12,250 persons in the consolation contest:

19. On August 15, 1945, in connection with notification sent to those contestants in the original contest who had solved correctly all 80 puzzles of the first tie-breaking group and who had scores of 160 correct solutions it was announced that the sponsor would pay up to four times the value of the original prizes offered to those who became winners of prizes, provided those winners purchased Book Club memberships up to a period of one year. Thus, it became possible for the winner of first prize to win as much as $40,000. Plaintiff, as sponsor, made it clear in connection with said offer that the full amount of the original prizes offered would be paid irrespective of whether or not any contestant decided to avail himself or herself of the opportunity to compete for the larger amounts. Plaintiff further made it clear to the contestants that whether or not the increased prize offer was accepted by the contestants, they would add the amount thereof to the list of prizes, thereby increasing the number of persons eligible to win a prize. Plaintiff also made it clear that a large number of persons were tied. A copy of the letter of August 15, 1945 aforementioned is attached hereto as Exhibit C and prayed to be read and considered as part hereof.

20. In the letter of the sponsors dated August 17, 1945, a form was sent to each contestant, with spaces on which the contestant was asked to indicate whether or not he or she wished to compete for the added prizes or wished to compete only for the prizes for which he or she was at that time eligible to compete. In view of the fact that the contestant had already filled in a previous form in connection with the double prize offer, the offer of August 15, 1945 was presented by means of a form described as "Appendage for Form for Specifying Prize Eligibility." The letter enclosed with the Appendage is a cir-

cular letter of three pages which makes it clear to the contestant that:

(a) the contestant is not under any obligation whatever to purchase more books;

(b) that the purchase of books cannot cause the contestant to win a prize;

(c) that "winners will be selected solely in accordance with the rules on the basis of the final tie-breaking requirements of the contest as stated in my letter of August 15th * * * the prizes would be awarded on the basis of the submissions to the final tie-breaking puzzles and if necessary the letter in accordance with the final tie-breaking requirements of the contest";

(d) that there is a deadline of Midnight, August 25th for the acceptance of the increased prize offer, and that no contestant will be permitted to increase his or her prize eligibility after that date;

(e) that the sponsor's purpose in appropriating this large amount of money for prizes is to sell more of the Book Club books in order to obtain the advantage and economies that accrue from large production for a large membership.

A copy of the aforementioned letter is attached hereto as Exhibit D and prayed to be read and considered as part hereof.

11 The letter is a model of honesty and candor in direct mail advertising. It tells the truth, clearly and unmistakably. Frankly, its purpose is to sell books and it so states.

21. The letter of August 17, 1945, from the sponsors to each contestant accompanied the Appendage aforementioned and was a sincere effort by plaintiffs as sponsors to avoid the ill-will of contestants. Plaintiffs knew from their long experience that should a contestant buy a lot of books with which he was dissatisfied, plaintiffs would not only lose his good will but would incur the burden and expense of making refunds to such a dissatisfied purchaser. Plaintiffs did not intimidate the contestant or suggest that his investment would be jeopardized unless he accepted the offer.

22. Further emphasizing the sponsors' honesty, ethics and complete candor in its dealings with the public is its circular letter dated August 18, 1945, which clearly falls into the category of square-dealing salesmanship. In this letter the contestant is once more referred to the opportunity to compete for the increased prizes up to a first prize of $40,000, but once more the sponsor makes it clear that "we want you to fully understand your status as defined in my letter of August 15th." A copy of the letter of August 18, 1945 aforementioned is attached hereto as Exhibit E and prayed to be read and considered as part hereof.

12 23. From the very moment the contestant entered the contest he was dealt with frankly and honestly. Contestants who solved the group of 80 puzzles correctly were notified that their answers were correct and that they were tied with other contestants. In no way was the contestant given to understand that his tieing status meant that he would win a prize. The letter which announced that the contestant was tied and that the tie-breaking puzzles were being forwarded, said in part:

"Facts Magazine desires to take every precaution to avoid all possible disappointment or ill will on the part of contestants. For this reason, we wish to make it clear to you that the receipt of this tie-breaker by you does not mean that you have already won a prize or that you are certain to win First Prize, Second Prize or any other prize in this contest. If you should win the $10,000 First Prize or any other prize, you will be definitely notified of the fact by us as soon as possible. Meanwhile, in submitting solutions to the tie-breaker, to avoid any and all possibility of disappointment, please consider the tie-breaker strictly as provided for in the rules, and not as assurance by us, either direct or implied, that you are going to win the $10,000 First Prize, Second Prize, or any other prize in the contest."

The language of the foregoing letter cannot be misunderstood. The contestant is told with absolute honesty and candor that the fact that he is tied does not mean that he has any assurance, direct or implied, from plaintiffs that he is going to win any prize whatever in the contest; furthermore, that he is to consider the tie-breaker strictly as provided for in the rules. The rules de-

13 vote seventeen lines of type to the provisions for breaking ties. There is no basis for the claim that plaintiffs either concealed the tie-breaking provisions of the contest or represented them as anything other than what they were. The excerpt from the announcement letter of the first tie-breaker, as quoted above, was also printed on the front page of the circular containing the first tie-breaking group of 80 puzzles. There was no deception, no concealment, no withholding of facts from the contestant. The contestant was never promised anything that was not delivered, and was never given any impression that was in any manner contrary to absolute truth and fact.

24. All submissions of solutions to the puzzles have been or are being judged by the Reuben H. Donnelley Company, the leading company engaged in this business in the United States. The Donnelley Company is recognized nationally as the contest judging organization to which the largest national advertisers in America entrust the handling and judging of their contests. The Donnelley Company is likewise the printer of "Time" and "Life"

magazines and the compiler and printer of the New York Telephone Directory. No judging of submissions is done by plaintiffs or by any company or individual associated with plaintiffs. The judging is being done in accordance with a contract entered into between plaintiff Publishers Service Company, Inc., and Reuben H. Donnelley Company. The Contract between Publishers Service Company, Inc. and Reuben H. Donnelley Company
14 was entered into after submission to the Donnelley Company of a copy of the official rules and advertising. The judging is done with the highest degree of care by thoroughly competent employees of the Donnelley Company.

25. The announcement of the many other contests conducted by Publishers, together with the rules and complete details of the manner in which each such contest was to be conducted have been reviewed by hundreds of the editors of newspapers and by their counsel, and in many instances the publishers have presented the announcement, the rules of the contest and all facts concerning the manner in which the contest was to be conducted to officials of the Post Office Department for approval. In no instance has there ever been the slightest suggestion that any of the contests conducted by Publishers and such newspapers was tainted with the fraud now attempted to be imputed; nor has there ever been an instance where any of the contests ever conducted by Publishers have been denied the use of the mails.

26. On or about June 26, 1945, the Solicitor of the Post Office Department issued a citation directing plaintiffs Henry Walsh Lee, Judith S. Johnson, and Facts Magazine to show cause at a hearing before the Solicitor why a fraud order should not be issued against them. The citation charged that plaintiff Publishers Service Company, Inc., operating under the respondents' names, was engaged in conducting a scheme for obtaining money through the mails in violation of 39 U. S. C., Sections 259
15 and 732, in connection with a so-called "Hall of Fame" contest, upon pretenses, representations, and promises contained in advertisements and printed matter sent through the mail to the effect:

(a) that said "Hall of Fame" contest is a puzzle contest in which the prizes will be awarded for correct solution of puzzles;

(b) that there exists a probability that the contestant will become a prize-winner merely by submission of correct solutions to the first group of 80 puzzles;

(c) that the only fees to be paid by the contestant, even though it becomes necessary that he participate in the later phases of the contest, are those fees which he submits with his solution to the first series of puzzles.

A copy of the aforementioned letter to defendant from the Solicitor and of the citation appended thereto is attached hereto as Exhibit F and prayed to be read and considered as part hereof.

27. Respondents in the proceeding answered the citation with a general denial of the charges.

28. A hearing was had on September 4 and 5, 1945, before an Assistant Solicitor of the Post Office Department, at which time evidence was introduced on behalf of the government and by plaintiffs and a transcript thereof made which transcript is made part hereof by reference and will be submitted to the Court at the proper time.

29. The Solicitor of the Post Office Department made a
16 finding of fact and recommendation to the defendant Postmaster General that a fraud order be issued against the respondents in the proceeding. The defendant accepted such finding and recommendation of the Solicitor and issued the fraud order against such respondents which is now under attack. A copy of said fraud order is attached hereto as Exhibit G and prayed to be read and considered as part hereof.

30. Said fraud order now sought to be enjoined was not fairly arrived at, has no substantial evidence to support it, and is palpably wrong and therefore arbitrary. The announcement of the contest, the rules prescribed in connection therewith and the manner in which the contest is being conducted are frank, clear, and easily intelligible. No representations were made that prizes would be awarded for the correct solution of puzzles only; no representations were made that a probability existed that any contestant would become a prize winner merely by the submission of correct solutions to the first Group of 80 puzzles; and no representations were made that the only fees to be paid by the contestant, even though it became necessary that he participate in the later phases of the contest, would be those fees which he submitted with his solutions to the first series of puzzles. At the hearing leading up to the fraud order not a single contestant testified that the announcement of the rules of the contest was misleading and not a single contestant testified to support the government charges in the citation that the rules were
17 misleading, confusing, or fraudulent. On the contrary, when Inspector Boyle, the Government's only witness, was asked whether or not plaintiffs, as sponsors and promoters, had fulfilled all promises made by them he frankly admitted that they had done so. Plaintiffs, as sponsors and promoters, promised to pay prizes to those persons who submitted solutions to 80 puzzles by June 16, 1945, and to break ties in such contest by one and if necessary two tie-breakers, the second to be accompanied by a letter. The contestant by entering the contest undertook to solve

these puzzles and to write a letter as well as to pay stipulated fees. The plaintiffs, as sponsors and promoters, undertook to pay duplicate prizes in the event of final ties. This was a contract valid as to plaintiffs, as sponsors and promoters, and as to each contestant. The contract has been or will be lived up to by plaintiffs in all particulars.

31. Read Magazines Inc. has a very substantial investment in the two magazines published by it, "Read" and "Facts." Through the expenditure of large sums of money the circulation of these magazines has reached 250,000 and 225,000 copies per month respectively. Vastly increased circulation is in prospect with the lifting of War Production Board paper restrictions. Plaintiff, Henry Walsh Lee, is the editor of both these magazines. Much correspondence through the mail is addressed to him as well
18 as to "Read" and "Facts" magazines, which has no relation to the contest sponsored by "Facts" magazine. Literary Classics Inc., for whose benefit the contest was conducted, has been engaged for many years in the publication of outstanding classical literature. It has published and sold approximately 3,513,000 copies of the works of Mark Twain, approximately 3,070,000 copies of the works of Charles Dickens, approximately 2,213,000 volumes of the "Masters Standard Library of Classics" consisting of 100 volumes of classical literature, and approximately 853,000 sets of Nelson's Encyclopedia, consisting of 30 volumes each. Publishers Service Company Inc., in addition to its newspaper circulation promotional activities, has been instrumental in the sale of classical literature and has sold approximately 2,000,000 albums of symphonic phonograph records manufactured by the R. C. A. Victor Corporation and recorded by leading orchestras and conductors in the United States. The business of plaintiffs is wholly legitimate and has resulted in the dissemination of tremendous quantities of excellent literature and music at minimum prices.

32. Unless the instant fraud order is enjoined, plaintiffs will not only lose the sum of $936,843.71 heretofore incurred as an expense of sponsoring the contest since they would be compelled to return all receipts heretofore collected from contestants, but plaintiff corporations will suffer irreparable injury in the ruin of their business of publishing magazines and books, and manufacturing phonograph records. Not only will such fraud
19 order result in the destruction of plaintiff corporations' business; but it will deprive approximately 27,000 persons, presently competing in the contest, of their very substantial property right to participate in the distribution of $105,000 in prizes. Such deprivation will result without any hearing being accorded to them and without any reimbursement for the time and effort

expended by them in taking part in the competition. Such consequence will have a disastrous effect upon plaintiff corporations' good will, and will deprive such companies of a very substantial potential market for their merchandise.

33. Publishers and its subsidiaries have long been engaged in a legimate promotional business and its services have been utilized by outstanding and responsible newspapers throughout the United States. The advertising data announcing the contest here in issue and stating the rules was accepted by over 300 outstanding newspapers. Not one of the persons, who are responsible for material appearing in their publications, complained of the slightest ambiguity in the announcement of the rules of the contest. Publishers and its associated compaines have made a vast investment in the conduct of its business which is being put in jeopardy by the fraud order herein under attack. Should the fraud order be sustained not only will the instant contest fail, with very substantial losses to plaintiff, as sponsor thereof, but the consequences to Publishers' other business will be catastrophic.

20 34. The control sought to be exercised by the defendant over the business and affairs of plaintiffs by the issuance of the instant fraud order is violative of the First Amendment to the Federal Constitution, in that it abridges freedom of speech on the part of plaintiffs as sponsors and promoters of the contest and imposes upon them defendant's arbitrary views of what may or may not be said in advertising its contests and how it must be said. The control sought to be applied to plaintiffs constitute censorship of the most arbitrary and capricious type which, if generally applied, would result in barring from the mails a very large percentage of all national advertising. The instant fraud order not only deprives plaintiffs of the freedom of speech guaranteed by the Constitution, but is a threat to the existence of the guarantee itself.

Wherefore the premises considered, plaintiffs pray that:

1. This honorable Court issue a subpoena to the defendant directing him to appear herein and answer the allegations of this complaint.

2. This Court issue a temporary restraining order and a preliminary injunction restraining and enjoining defendant, his agents, servants, and employees, pending a final hearing and determination of this cause, or until further order of the Court (a) from enforcing or attempting to enforce said fraud order and from interfering with the right of plaintiffs to receive
21 mail addressed to them or to make use of the money-order facilities and services of the Post Office Department and (b) from in any way interfering with the normal conduct of their

business as the consequence of the issuance of said fraud order.

3. Upon the final hearing and determination of this cause, this Court issue a permanent injunction enjoining defendant, his agents, servants, and employees from (a) directly or indirectly doing, or attempting to do, any act or thing in pursuance of said fraud order or enforcing or attempting to enforce said fraud order and (b) from in any way interfering with the normal conduct of plaintiffs' business as the consequence of the issuance of said fraud order.

4. For such other and further relief as to the Court may seem proper.

READ MAGAZINE INC.,
By HENRY WALSH LEE, *Vice-President.*
LITERARY CLASSICS, INC.,
By ESTHER FERTEL, *Secy.-Treas.*
PUBLISHERS SERVICE COMPANY, INC.,
By ESTHER FERTEL, *Secy.-Treas.*
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Of Counsel:
CUMMINGS & STANLEY.

22 [*Duly sworn to by Henry W. Lee; jurat omitted in printing.*]

24 *Exhibit "B" to complaint*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.,
July 3, 1945.

Tie-Breaking Puzzles Forwarded by Registered Mail

It gives us great pleasure to advise you that the solutions you submitted in our Puzzle Contest were adjudged correct in their entirety.

In extending our congratulations, we feel sure you will be interested in knowing that many thousands of persons who competed against you either missed one or more of the puzzles or dropped out of the contest entirely. Among the puzzles which contestants found the more difficult were Nos. 39, 40, 59, 63. Contestants who submitted all 80 correct solutions are tied.

By Registered Mail a tie-breaking group of puzzles will be forwarded to you for solution in accordance with the rules of the contest. Ten thousand dollars is the amount which we will pay to the tying contestant who becomes the First Prize Winner, as provided in the rules. As a tying contestant, you have an opportunity to become the winner of the First Prize.

Facts Magazine desires to take every precaution to avoid all possible disappointment or ill-will on the part of contestants. For that reason, we wish to make it clear to you that the receipt of this tie-breaker by you does not mean that you have already won a prize or that you are certain to win First Prize, Second Prize or any other prize in this contest. If you should win the $10,000 First Prize or any other prize, you will be definitely notified of that fact by us as soon as possible. Meanwhile, in submitting solutions to the tie-breaker, to avoid any and all possibility of disappointment, please consider the tie-breaker strictly as provided for in the rules, and not as assurance by us, either direct or implied, that you are going to win the $10,000 First Prize, Second Prize, or any other prize in the contest.

Within the next day or two you may expect to receive by Registered Mail the tie-breaking puzzles. Full instructions will be printed with the tie-breaking puzzles, as to the date for submitting your tie-breaking solutions.

With all good wishes, and again congratulating you, we remain

Very sincerely yours,

FACTS MAGAZINE.
By JUDITH S. JOHNSON,
Contest Editor.

JSJ:ac.

759707--47——2

25 *Exhibit "C" to complaint*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.,

August 15, 1945.

It is a pleasure to notify you that you made a perfect score of 80 correct solutions on the first Group of tie-breaking puzzles. Your total score in the contest at this point is 160 correct solutions, and you still remain tied with contestants who have scores of 160 identical with your own.

The final tie-breaking puzzles are now being prepared. The prize winners will be determined after those contestants with present scores of 160 correct solutions have received and have submitted their solutions to the final tie-breaker accompanying them with the letter as provided by the Official Rules.

We believe we have delightful news for all contestants who, like yourself, now have scores of 160 correct solutions and are now eligible to compete in the final tie-breaking phases of the contest. Here is the news: we are going to make it possible for the First Prize Winner to receive as much as $40,000; 2nd Prize Winner $8,000; 3rd Prize Winner $4,000; with all 497 other prizes quadruple the original amounts offered.

While we are sure that you are happy to know that you have solved 160 puzzles correctly thus far, and are now in position to go into the final tie-breaking phases of the contest, Facts Magazine desires to continue to take every precaution within its power to prevent disappointment or ill will among those who fail to win prizes.

Therefore, please let me again make clear, just as I did when sending you the first Group of tie-breaking puzzles, that this letter is not to be interpreted by you as meaning that you have already won the First Prize or any prize at all.

26 Please understand that your status is strictly this: It is possible that you may win First Prize, or one of the other prizes, but this possibility must be based on your submissions to the final tie-breaking requirements of the contest. Also, realize at the same time that the final tie-breaking puzzles will be by far the most difficult puzzles presented in the contest and that you are competing with a very large number of very able competitors. Some one among the many contestants (perhaps it may be you

or it may be someone else) who now has a present score of 160 correct solutions will ultimately win First Prize in this contest, and this will be determined by the final tie-breaking requirements as provided in the rules, but Facts Magazine does not want any contestant to be under the impression that he or she is certain to win any prize or that a very small number of people are tied.

We urge you to compete seriously and diligently in the final tie-breaking phases with our assurance that every possible means has been provided to give your submissions careful, accurate, efficient attention, and that if you are entitled to win you shall win, at the same time realizing that this is a contest among a large number of contestants and that the only thing that the sponsor can promise is that your entry will be given the identical, fair, careful attention of every other entry and that the prizes will be paid to the rightful winners.

It is our great desire to conduct this contest so fairly and so efficiently that whether you win as much as $40,000.00 or whether you win no prize whatever, you nevertheless will always feel that Facts Magazine did everything within its power to make the facts clear to you, and to give you a full, fair, honorable opportunity to win.

Your present eligibility to compete for the prizes as previously offered will be in no way affected by whether or not you elect to become eligible to compete for the increased prizes up to $40,000.00 referred to in this letter.

Trusting that this contest may result in your entire pleasure and satisfaction, consistent with fairness to one and all, we remain

Very sincerely yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JSJ:R**

27 *Exhibit "D" to complaint*

A DIVISION OF READ MAGAZINE, INC.

FACTS

The Magazine More Fascinating Than Fiction

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.,
August 17th, 1945.

Enclosed you will find the Appendage referred to in my previous letter.

Your signature is required on the upper portion of the first page, and you are to check either line (A), (B), (C), (D), (E), (F), or (G) on the same page. To obtain eligibility to compete for a First Prize of $40,000, $35,000, $30,000, $25,000, $20,000, or $15,000 your signature is also required at the bottom of the first page and in the proper space provided on the following pages.

Please sign and designate as required, and return the Appendage as promptly as possible, but not later than Midnight, Saturday, August 25th.

Before executing, please read this letter and the Appendage very carefully. Your present status in Section (G) entitles you to receive $10,000 if you are the winner of First Prize. Your preference expressed in this Appendage will determine whether 1st Prize if won by you will be in the amount of $40,000, $35,000, $30,000, $25,000, $20,000, or $15,000 or whether any other prize if won by you will be increased proportionately.

As you will note by the Appendage, we have added an extra $35,000 to the $35,000 prize fund already established, and we now stand ready to pay you either $40,000; or $35,000; or $30,000; or $25,000; or $20,000; or $15,000; or $10,000 if you become the winner of First Prize under the provisions of the Appendage. The sole determining factor in increasing the amount of a prize is the length of membership in our Book Club effective with the October book. At the present time you are eligible to compete for a First Prize of $10,000, the original amount of that prize as originally offered.

By the provisions of the enclosed Appendage you can establish your eligibility to compete for a First Prize of $40,000, $35,000, $30,000, $25,000, $20,000, or $15,000 instead of $10,000.

As specified in the Appendage, you would receive $40,000 as First Prize if same is won by you, if you send us your membership in the Book Club for twelve months beginning with the Book for October 1945.

28 Whether you wish to be in the Book Club for twelve months, ten months, eight months, six months, four months or two months is naturally something you must decide for yourself. As we said before, we stand ready to pay these huge added amounts to winners on the basis of the length of membership of the winners in the Book Club, our purpose in appropriating this large extra amount of money for prizes being to sell more of the Book Club books in order to obtain the advantages and economies that accrue from large production for a large membership.

In inviting contestants to compete for increased prizes through continuing to buy our Book Club books, we have this request to make. The request is simply this: Please do not spend your money for these books unless you really and truly want the books for your

own home library, or for gifts to friends. In other words, we hope no contestant will buy the books merely for the purpose of increasing a prize, and we ask that no contestant spend more money for books than that contestant would normally expect to spend over a period of months for the purchase of similar books.

We want to be certain that the contestant who qualifies for eligibility to compete for $40,000, $35,000, $30,000, $25,000, $20,000, or $15,000 by purchasing the books of the Book Club truly WANTS the books he or she is buying and therefore feels that he is getting good books for the money spent irrespective of whether or not that contestant wins the highest prize of $40,000 or wins no prize at all.

It is our belief that the classics published by the Literary Classics Book Club are distinguished by beautiful binding, original introductions, superb art and typography. We believe these volumes are splendid cultural additions to a home library. In this spirit, we seek to sell our books only to persons who truly wish to own our classics and who under no circumstances will feel that they are spending money on something they do not want simply because the purchase involves eligibility to compete for cash prizes.

We also wish to make clear that you are not under any obligation whatever with regard to membership. You are now eligible to compete for any of 500 prizes of which First Prize is $40,000. Whether you do or do not increase this eligibility to $15,000, $20,000, $25,000, $30,000, $35,000, or $40,000 will in no way have any effect on whether or not you win First Prize or an other prize. Your decision to increase the amount of the prize for which you are eligible to compete cannot CAUSE you to win. It can only increase the amount of a prize in case you become the winner of same. Winners will be selected solely in accordance with the rules on the basis of the final tie-breaking requirements of the contest as stated in my letter of August 15th in which I notified you that you had a score of 160 correct solutions and were tied with other contestants with the same score, and that the prizes would be awarded on the basis of the submissions to the final tie-breaking puzzles and if necessary the letter in accordance with the final tie-breaking requirements of the contest.

29. Please understand that there is no financial saving in prizes to us in the event no increased prizes are won, because any portion of the added $35,000 which is not used in paying increased prizes will be used for extra prizes to be added after the 500th prize. Thus, the entire amount must be paid out by us in prizes in one form or another.

You will recall that I said in a previous letter that it would seem to me most unfortunate if any contestant who becomes a

prize winner had failed to take fullest advantage of this opportunity to win the maximum prizes. If you win First Prize it can mean the difference between receiving $10,000, and receiving as much as $40,000. As you will note in the Appendage, you can designate membership for two months, four months, six months, eight months, ten months or twelve months. Each two months of increased membership is equivalent to an additional $5,000 in the amount of First Prize. We believe that those contestants who value classic literature in beautiful bindings will be delighted with this opportunity.

Upon executing the enclosed Appendage, please mail same back to us by return mail if possible, using the enclosed self-addressed special envelope. Check or money order enclosed should be made payable to FACTS Magazine. The Appendage must be mailed before Midnight, Saturday, August 25th, to establish increased prize eligibility.

Awaiting receipt of your Appendage, with your designation of Section (A) or (B) or (C) or (D) or (E) or (F) or (G), and wishing you all success in the contest, consistent with fairness to all, we remain

Most sincerely yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JSJ/R.
encls.

30 *Exhibit "E" to complaint*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.

August 18, 1945.

At this moment when the hearts of the world are gladdened by the end of the War, permit me to take this opportunity on behalf of FACTS Magazine to express our gratification to those who have participated in our contest and to voice the hope that your friendship for Facts, begun during World War II, will last through eternal years of peace.

It is in that spirit that we send this letter to you.

As you undoubtedly realize, Facts Magazine stands ready to pay as much as $40,000.00 in cash to the winner of First Prize in our contest in accordance with the provisions in the Appendage forwarded to you yesterday.

Forty thousand dollars is truly a cash fortune. For many persons it can mean financial independence for life. For others, it can mean the money with which to buy a beautiful home, or a farm, or the money with which to start a business. Indeed, it is a cash prize of such huge amount, that it can bring tremendous happiness to practically anyone who wins it. Facts wants to be certain that overlooking this opportunity does not bring unnecessary disappointment to our contestants whom we consider as our good friends.

Between now and Midnight of Saturday, August 25th, you have the problem of deciding whether you wish the eligibility to compete for the maximum of $40,000, or whether the amount for which you wish to become eligible to compete shall be $35,000, $30,000, $25,000, or a lesser amount.

Because the prize is so large, and because it can be such an important event in the life of the winner, it seems appropriate to emphasize once again the spirit in which we make it possible for you to win this large amount.

First let me say that we hope you will decide to become eligible to compete for the maximum award that can be won in the contest, $40,000, but at the same time we trust you will do so only if you really and truly want the Book Club books which you will receive for the money you pay.

We emphasize this point because, in order to become eligible to compete for $40,000, $35,000, $30,000, or $25,000 as First
31 Prize with all other prizes increased proportionately over the original amounts offered, it is necessary to buy and pay for the various Book Club books as specified in the Appendage. If you really want the books, either for your own home library or as gifts for friends, then we will feel that the money you pay for same is well and wisely spent. On the other hand, we do not want any contestant to purchase the books merely to become eligible to compete for the large prizes, without any desire to possess the books for their own sake.

The entire spirit of this letter is to prevent disappointment or ill will on your part in the event you do not win the prize on which you have set your heart. As we have said before, it is possible for you to win as much as $40,000 under the provisions of the Appendage, and we hope you will decide to become eligible to compete for that maximum amount. But we want you to fully understand your status as defined in my letter of August 15th,

and we want to discourage you from purchasing books that you really do not want merely because the purchase enables you to become eligible to compete for prizes up to $40,000.

I am sure you understand that your eligibility to compete for the prizes as originally offered or for which you have already established eligibility is in no way affected by whether or not you decide to become eligible to compete for the maximum prize of $40,000, or the lesser prizes of $35,000, $30,000, $25,000, etc. We present the offer as a marvelous opportunity to those who sincerely want the Book Club books, and not as an obligation to any contestant in any sense of the word.

Permit me to point out once more that the Appendage must become part of your file in the contest, and must be mailed back to us, postmarked before Midnight, Saturday, August 25th.

As we said before, we hope you will decide to compete for the maximum prize that can be won, but we ask that you do so in the spirit of this letter. Our fondest hope is that at the end of the contest, irrespective of whether you receive a letter from us saying that we regret you did not win, or whether you receive a letter enclosing a check for $40,000 or a lesser amount, you will always feel that you got full value in books for every penny you sent us, and that the contest was fine and fair in every way—and that you will always remain a true and lasting friend of

Very sincerely yours,

FACTS MAGAZINE.
By JUDITH S. JOHNSON,
Contest Editor.

JSJ:R*.

32 *Exhibit "F" to complaint*

POST OFFICE DEPARTMENT,
OFFICE OF THE SOLICITOR,
Washington 25, D. C., June 26, 1945.

PUZZLE CONTEST, FACTS MAGAZINE; CONTEST EDITOR, FACTS MAGAZINE; JUDITH S. JOHNSON, CONTEST EDITOR; MISS J. S. JOHNSON, CONTEST EDITOR; CONTEST EDITOR; FACTS MAGAZINE; AND HENRY WALSH LEE, EDITOR IN CHIEF, FACTS MAGAZINE, NEW YORK, NEW YORK.

GENTLEMEN: Enclosed herewith is specification of charges that you are engaged in conducting a scheme or device for obtaining money through the mails by means of false or fraudulent pretenses, representations or promises, in violation of Sections 3929 and 4041 of the Revised Statutes, as amended (Secs. 259 and 732 of Title 39, U. S. Code), a copy of which is also enclosed.

These statutes authorize the Postmaster General to forbid the delivery of mail and the payment of money orders to any person or company found to be operating a scheme or device in violation thereof.

These charges will be taken up for disposition on July 16, 1945, at 10:00 o'clock, A. M., at a hearing before the Solicitor of the Post Office Department, in Room 3226, New Post Office Department Building, Washington, D. C. If an answer to the charges is made, it should be in writing, and three copies thereof should be submitted. It may be forwarded by mail or presented in person or by counsel at the time stated, when evidence in support thereof may also be submitted.

The case will be heard and disposed of at the time stated whether or not answer or appearance is made.

At the conclusion of the hearing or within such time thereafter as may reasonably be required therefor, counsel for the government and respondents will be afforded an opportunity to submit oral argument, briefs, and proposed findings of fact and of law, for consideration in connection with disposition of the charges. A verbatim report will be made of the hearing and a copy thereof furnished counsel for the government. Respondents will be permitted to have the use of a copy of the report for the purpose of preparing said argument, briefs and proposed findings, but it must then be returned to the Department.

Very truly yours,

VINCENT M. MILES, *Solicitor.*

Enc.
283a.

33

POST OFFICE DEPARTMENT,
OFFICE OF THE SOLICITOR,
Washington, June 26, 1945.

F. & L. Docket 14/393

IN THE MATTER OF CHARGES THAT PUZZLE CONTEST, FACTS MAGAZINE; CONTEST EDITOR, FACTS MAGAZINE; JUDITH S. JOHNSON, CONTEST EDITOR; MISS J. S. JOHNSON, CONTEST EDITOR; CONTEST EDITOR; FACTS MAGAZINE; AND HENRY WALSH LEE, EDITOR IN CHIEF, FACTS MAGAZINE, AT NEW YORK, NEW YORK.

are engaged in conducting a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises, in violation of 39 U. S. Code 259 and 732 (Sections 3929 and 4041 of the Revised Statutes, as amended).

MEMORANDUM RECOMMENDING THE ISSUANCE OF A CITATION TO SHOW CAUSE WHY A FRAUD ORDER SHOULD NOT BE ISSUED

It is charged that under the above names the Publishers Service Co., Inc., is engaged in conducting a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises, in violation of 39 U. S. Code 259 and 732 (Sections 3929 and 4041 of the Revised Statutes, as amended), which said scheme is in substance and effect as follows:

Said concern operating as aforesaid is obtaining and attempting to obtain various remittances of money through the mails from divers persons as fees accompanying solutions submitted in a in a so-called "Hall of Fame" contest upon pretenses, representations and promises, contained in advertisements and
34 written and printed matter sent through the mails to the effect:

That said "Hall of Fame" contest is a puzzle contest in which the prizes will be awarded for the correct solution of puzzles;

That there exists a probability that the contestant will become a prize winner merely by the submission of correct solutions to the first group of 80 puzzles;

That the only fees to be paid by the contestant, even though it becomes necessary that he participate in the later phases of the contest, are those fees which he submits with his solutions to the first series of puzzles.

Whereas, in truth and in fact, all of the said pretenses, representations, and promises are false and fraudulent.

I, therefore, recommend that said concern be called upon to show cause why a fraud order should not be issued against the names set forth in the caption hereof.

WILLIAM C. O'BRIEN, *Attorney.*

To the SOLICITOR,
Of the Post Office Department.

35 *Exhibit "G" to complaint.*

POST OFFICE DEPARTMENT,
Washington, Oct. 1, 1945.

Order No. 29273

It having been made to appear to the Postmaster General, upon evidence satisfactory to him, that Puzzle Contest, Facts Magazine; Contest Editor, Facts Magazine; Judith S. Johnson, Contest Editor; Miss J. S. Johnson, Contest Editor; Contest Editor; Facts Magazine; and Henry Walsh Lee, Editor in Chief, Facts Magazine, and their officers and agents at as such, at New York,

New York, are engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, representations, and promises, in violation of sections 259 and 732 of title 39, United States Code, said evidence being more fully described in the memorandum of the Solicitor for the Post Office Department of the date of September 17, 1945, and by authority vested in the Postmaster General by said laws the Postmaster General hereby forbids you to pay any postal money order drawn to the order of said concerns and parties and you are hereby directed to inform the remitter of any such postal money order that payment thereof has been forbidden, and that the amount therof will be returned upon the presentation of the original order or a duplicate thereof applied for and obtained under the regulations of the Department.

And you are hereby instructed to return all letters, whether registered or not, and other mail matter which shall arrive at your office directed to the said concerns and parties to the postmasters at the offices at which they were originally mailed, to be delivered to the senders thereof, with the words "Fraudulent: Mail to this address returned by order of Postmaster General" plainly written or stamped upon the outside of such letters or matter. Where there is nothing to indicate who are the senders of letters not registered or other matter, you are directed to send such letters and matter to the appropriate dead letter branch with the words "Fraudulent: Mail to this address returned by order of Postmaster General" plainly written or stamped thereon, to be disposed of as other dead matter under the laws and regulations applicable thereto.

(Signed) ROBERT E. HANNEGAN,
Postmaster General.

(Case No. 50069-F.)

To the POSTMASTER,
New York, New York.

36 In the District Court of the United States

[Title omitted.]
[File endorsement omitted.]

Affidavit of Henry Walsh Lee

Filed Oct. 2, 1945

STATE OF NEW YORK,
County of New York, ss:

Henry Walsh Lee, being duly sworn, deposes and says:

1. I am Vice President of the plaintiff Read Magazine Inc., and Editor of the two magazines published by it known as "Read" and

"Facts." I am likewise a Vice President of the plaintiff, Publishers Service Company, Inc. I am thoroughly familiar with the business of these companies and with the subject-matter of the above-entitled action.

2. Read Magazine Inc. is a corporation organized under the laws of the State of New York, having its principal office and place of business at 75 West Street, New York, N. Y.

37 The primary business of this corporation is the publication of the above-mentioned magazines. These magazines, which appear monthly, are devoted principally to the publication of original essays upon persons, places and things of current interest. The magazines have become widely popular and "Read" now has a monthly circulation of 250,000 and "Facts" 225,000. A greater increase in circulation of these magazines is immediately anticipated as a result of the lifting of War Production Board limitations upon the use of paper.

3. Plaintiff, Publishers Service Company Inc., is a corporation organized under the laws of the State of New York in 1930, as successor to a corporation of the same name organized under the laws of the State of Delaware in 1928. The principal business of this corporation is the promotion and circulation of books and magazines and the sale of books and phonograph records published or manufactured by its subsidiary companies. In the newspaper field the company has conducted about 150 contests for the promotion of circulation of leading American newspapers. Prior to the war and the curtailment of newsprint, the company conducted contests almost exclusively for newspapers. Its clients include some of the outstanding newspapers of the United States. It has conducted contests for the promotion of subscriptions to magazines and the sale of books published by its subsidiary, Literary Classics Inc. It is the promoter of the "Hall of Fame" contest sponsored by "Facts" magazine for the purpose of merchandising books published by Literary Classics Inc.

38 4. Literary Classics Inc. is a corporation organized under the laws of the State of New York and is a subsidiary of Publishers Service Company Inc. It has published and sold millions of high-quality copies of the works of Mark Twain, Charles Dickens, Nelson's Encyclopedia, and Standard Library of Classics consisting of 100 volumes of classical literature, at minimum prices attained through quantity production methods. Publishers Service Company has promoted the sale of these books by vast national advertising campaigns. It has likewise sold millions of albums of high-class symphonic phonograph records by the same methods.

5. On April 1, 1945, "Facts" magazine sponsored, and Publishers Service Company promoted, for the benefit of Literary

Classics Inc., a contest for the purpose of promoting the sale of books published by Literary Classics Inc. The contest was nationally advertised in newspapers and in "Facts" magazine. The sponsor offered the public a first prize of $10,000 and 499 other prizes, totalling $17,500 to the winners of the contest. The sponsor offered a group of 80 rebus puzzles for solution. A rebus puzzle consists of a series of pictures of objects to be identified and named by the contestant. By addition and subtraction of letters in the names identifying the objects, the solution of the puzzle is obtained. The 80 puzzles submitted for solution were divided into 20 series of 4 puzzles each. The dead-line for entering the contest was June 16, 1945. Each series of 20 puzzle solutions submitted was required to be accompanied by 15¢ in coin.
39 The rules provided that, to break ties among contestants submitting solutions to the group of 80 puzzles, a first and if necessary a second tie-breaking group of puzzles would be submitted to the surviving contestants for solution. The rules further stipulated that the second tie-breaking group of solutions must be accompanied by an essay of 200 words. The rules provided that with each series of 4 solutions to the tie-breaking group of puzzles, the contestant must remit 15¢. The sponsor stated in advertising the contest that its purpose was to popularize the Literary Classics Book Club and that all contestants who made the required remittances with each group of 80 puzzles would receive the book published by that Club for the months of July, August and September.

In the rules the sponsor advised prospective contestants that: "Upon entering the contest, the entrant is asked to realize that the sponsor anticipates that a large number of persons may enter the contest and that a large number may solve one, two or all three of the Groups of puzzles * * *" (Rule 9).

6. During the course of the contest the sponsor offered the contestants who had become eligible to participate in the first tie-breaker an opportunity to double or quadruple the original prizes offered by the purchase of additional books. In addition, the sponsor offered a subsidiary contest with identical prizes to the entrants in the contest who had failed successfully to solve the first group of 80 puzzles. The amount of prize money
40 for which the sponsor now stands committed is $105,000. There are 27,000 persons competing for this prize money. The contest has reached the stage of the second tie-breaker prescribed by the rules, and will terminate on October 27, 1945.

7. On or about June 26, 1945, the solicitor for the Post Office Department issued a citation addressed to "Puzzle Contest, Facts Magazine; Contest Editor, Facts Magazine; Judith S. Johnson, Contest Editor; Miss J. S. Johnson, Contest Editor; Contest Edi-

tor; Facts Magazine; and Henry Walsh Lee, Editor in Chief, Facts Magazine; at New York, New York" to show cause why mail addressed to these respondents should not be marked "fraudulent" and returned to the senders, and why Post Office money orders drawn to their order should not be similarly treated.

8. The citation alleges that Publishers Service Company, through the instrumentality of the respondents, and the respondents were obtaining or attempting to obtain money through the mails in a so-called "Hall of Fame" contest upon pretenses, representations and promises contained in advertisements and printed matter to the effect that said "Hall of Fame" contest is a puzzle contest in which the prizes will be awarded for the correct solution of puzzles. The second specification alleges that respondents represented and promised that there existed a probability that the contestant will become a prize winner merely by the submission of correct solutions to the first group of 80 puzzles. The third specification alleges that respondents represented and promised that the only fees to be paid by the contestant,
41 even though it becomes necessary that he participate in the later phases of the contest, are those fees which he submits with his solutions to the first series of puzzles. The citation alleges that all the foregoing pretenses, representations and promises are false and fraudulent. The answer of respondents was a general denial.

9. On September 4 and 5, 1945, a hearing was held before Hon. Daniel J. Kelly, Assistant Solicitor of the Post Office Department, on the issues raised by the specifications and the denial. The Government's case at the hearing was presented through Post Office Inspector Francis Boyle, through whom was offered in evidence copies of the announcement of the contest containing the official rules together with communications between the sponsor and contestants. A true copy of the announcement of the contest containing the official rules is appended to the Company's complaint as Exhibit A.

It was urged at the hearing by the Government that the contest was not in fact a puzzle contest because it might be resolved by the writing of a letter. The answer of the respondents to this charge in brief was that the rules of the contest clearly stated that the winner of the contest might be determined by judgment of his letter. The Government argued that respondents represented and promised that there existed a probability that the contestant would become a prize winner merely by the submis-
42 sion of correct solutions to the first group of puzzles. This charge is specifically refuted by Rule 9, the pertinent part of which is quoted above in which the direct opposite is repre-

sented. The third charge urged by the Government was that respondents represented and promised that the only fees to be paid by the contestant, even though it became necessary that he participate in the later phases of the contest, are those fees which he submits with the solutions to the first series of puzzles. Respondents replied to this charge by referring to the rules, which clearly inform the contestant that remittances are required with each series of 20 solutions to all three groups of puzzles.

The Post Office Inspector, who was the only Government witness, testified on cross-examination that the sponsor had fulfilled every promise which it had made to contestants, and that he knew of no promise which it had made that was not fulfilled. If the sponsor had promised, as the Government alleges, that prizes would be awarded for the correct solution of puzzles only, Inspector Boyle would not have testified that the sponor fulfilled its promise. If the sponsor had promised, as the Government contended, that respondents represented and promised that there exists a probability that the contestant will become a prize winner by the submission of correct solutions to the first group of puzzles, Inspector Boyle would not have testified that the sponsor fulfilled his promise. If, as the Government urged, the respondents
43 represented and promised that the only fees to be paid by the contestant are those fees which he submits with his solutions to the first series of puzzles, Inspector Boyle likewise would not have testified that the sponsor had fulfilled his promise. Inspector Boyle testified that the rules required a letter to accompany the second tie-breaker; that tie-breakers were provided by the rules, and that fees were required to accompany each series of 20 puzzles in the tie-breaking group of puzzles. Inspector Boyle therefore testified to a clear understanding by him of the rules of the contest. There was no evidence at the hearing of any misunderstanding by anyone of the rules. Not a single witness was called by The Government to testify that the rules were not clear. The Government's case was predicated upon a blind and purposeful ignoring of the rules.

10. In spite of the lack of any evidence to support the specifications of fraud contained in the citation, the Postmaster General, on or about October 1st, 1945, purportedly acting under authority of Sections 3929 and 4041 of the Revised Statutes (39 U. S. C. A. 259, 732) issued an order prohibiting the delivery of mail or payment of money orders to respondents and directing the disposition of the mail which should be addressed to them.

11. This affidavit is made in support of an application by respondents and plaintiffs affected by said order to enjoin the Postmaster General from putting into effect such order.

12. The business of respondents and plaintiffs depends almost exclusively upon the use of the mails. Plaintiffs and respondents have a very substantial investment in their businesses. Up to August 20, 1945 the sponsor had expended the sum of $831,843.71 as actual expenses of the contest and had become liable for an additional $105,000 in prize money. It had receipts to that date of $762,441.90 and there was, therefore, a deficit of $169,401.81. Not only is the investment of the sponsor and promoter in the instant contest in jeopardy by the fraud order, but the entire investment of Publishers Service Company, Read Magazine Inc., and Literary Classics Inc. in their businesses is threatened. The businesses of these companies depend for their success upon the use of the mails. Two important properties of Read Magazine Inc., "Facts" and "Read" magazines, are directly affected by the fraud order. A great deal of mail, having no relation to contests whatever, is addressed to me and to these magazines. Under the instant order mail addressed to me and to "Facts" magazine will be marked "Fraudulent" and returned to the senders. Such action by postmasters throughout the United States will result in the ruin of this legitimate business and my professional career.

13. Of the original entrants in the "Hall of Fame" contest, approximately 27,000 are now eligible to compete in the final tie-breaker of the contest. These people in reliance upon the truthful representations by the sponsor and promoter have invested large sums of money and expended their time and effort in the competition. They have every right to expect to participate in accordance with their merits in the $105,000 in prizes offered them. The instant fraud order deprives them, as well as plaintiffs, of the benefit of the use of the mails. As to them no hearing whatever has been had. Not a single one of them was called as a witness in the hearing to testify as to his understanding or lack of understanding of the rules of the contest. Were the rules fraudulent, misleading or vague, as the Government contended at the hearing, it is reasonable to suppose that the Government would have produced witnesses from among the contestants so to testify. It is significant that it did not. The only inference to be drawn from this failure is that the contestants themselves would not support the Government's claim of fraud.

14. The announcement and rules of the "Hall of Fame" contest were presented to Mr. Gregory of the office of the Solicitor to the Postmaster General for review. He passed them as mailable. They were then presented to the Classification Department of the office of the Postmaster at New York, where they were similarly passed as mailable. Many of the newspapers which published the

advertisement first presented it to their counsel and local postmasters, none of whom found complaint with it. On the contrary, of the 300 newspapers which published the advertising material, over 200 of them, on solicitation of the promoter, wrote letters to the promoter stating their opinion that the advertising material and the rules are clear and fair.

46 15. After the receipt of the Solicitor's citation, the promoter of the "Fall of Fame" contest canvassed all contestants participating in the first tie-breaker as to their understanding of the rules. The following questions were submitted to such contestants with the following results:

Question No. 1: At the time you entered the contest did you read the rules?

Out of 33,930 replies received, the answers to Question No. 1 were as follows: 33,826 (99.69%) said that they had read the rules; 104 (.31%) said they had not read the rules.

Question No. 2: What was your understanding when you entered the contest regarding the sending in of 15¢ in coin with each series of tie-breaking puzzles?

Out of 33,930 replies received the answers to Question No. 2 were as follows: 33,346 (98.28%) stated: "I understood that the rules required 15¢ with each series of tie-breaking puzzles"; 584 (1.72%) said: "I did not understand that the rules required 15¢ with each series of tie-breaking puzzles."

Question No. 3: What did you understand you would received for the 15¢ remittances that were to be sent with each series of puzzles?

Out of 33,930 replies received, the answers to Question No. 3 were as follows: 32,796 (96.66%) said: "I understood that for the remittances that accompanied the first 80 puzzles I was to receive the July Book of Literary Classics Book Club, and that for the remittances I sent with the tie-breaking series I was to receive the Book Club Book for the following months"; 1,134

47 (3.34%) said: "I did not understand what I was to receive for the remittances sent in."

Question No. 4: What was your understanding at the time you entered the contest as to the number of puzzles and the letter provided for in the contest?

Out of 33,930 replies received the answers to Question No. 4 were as follows: 31,356 (92.41%) said: "I understood from the rules that there would be a group of 80 puzzles, the solutions to which were due to be mailed by June 16, and that to break ties there would be one, and if necessary two additional tie-breaking groups of puzzles, divided into series exactly like the first group. Any ties remaining on the final group of tie-breaking puzzles were

to be broken by a letter of not more than two hundred words on this subject: 'The puzzles I found most interesting and educational in this contest.' 2,574 (7.59%) said 'I did not understand from the rules that the tie-breaking puzzles and the letter were provided for in case of ties'."

16. Unless the instant fraud order is enjoined plaintiffs will suffer irreparable harm to their businesses in that the current contest which is about to terminate will be interrupted with consequent large financial loss to the sponsor and promoter, their associated corporations and to the contestants competing for the prize money. Not only will financial loss ensue, but plaintiffs' and Read Magazine Inc.'s substantial property, Facts Magazine, will be utterly destroyed. As Editor of that magazine I shall suffer
48 the ignominy of being branded a cheat without the slightest evidence to support such stigma. Coincidentally with the disaster to plaintiffs and their businesses which will attend carrying into effect of the fraud order, every newspaper which carried the advertisement of the contest will likewise suffer. The powers granted to the Postmaster General were never intended to be so exercised.

17. No previous application for the relief herein granted has been made to this or any other court.

Wherefore, I respectfully pray that this Court issue a temporary restraining order restraining defendant, his agents, servants, and employees (a) from enforcing or attempting to enforce the said fraud order hereinabove referred to, and from interfering with the right of plaintiffs, their agents, and employees, to receive mail addressed to them or to make use of the money-order facilities and services of the Post Office Department; and (b) from in any way interfering with the normal conduct of plaintiffs' businesses as a consequence of the issuance of said fraud order.

HENRY WALSH LEE.

Sworn to before me, this 2d day of October 1945.

Minnie Panisch.

MINNIE PANISCH,
Notary Public, New York County.

N. Y. Co. Clk's No. 186, Reg. No. 236-P-8.
Commission expires March 30, 1946.

55 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit in Opposition to Motion for Preliminary Injunction

Filed Oct. 16, 1945

UNITED STATES OF AMERICA
District of Columbia, ss:

The undersigned, Vincent M. Miles, being first duly sworn, says:

That since October 5, 1938, he has been and is now the Solicitor of the Post Office Department of the United States.

That on June 26, 1945, there was forwarded by him to the postmaster at New York, New York, for delivery to Puzzle Contest, Facts Magazine; Contest Editor, Facts Magazine; Judith S. Johnson, Contest Editor; Miss J. S. Johnson, Contest Editor; Contest Editor; Facts Magazine; and Henry Walsh Lee, Editor in Chief, Facts Magazine, a notice, certified copy of which is attached hereto as Exhibit A–1, transmitting a memorandum of specific charges, certified copy of which is attached hereto as Exhibit A–2, that said parties and concerns were obtaining remittances through the mails by means of false and fraudulent pretenses, representations and promises, in violation of Sections 259 and 732 of Title 39 of United States Code and advising that said charges would be taken

56 up for disposition on July 16, 1945, at 10:00 A. M., at a hearing before the Solicitor of the Post Office Department at the Post Office Department Building, Washington, D. C.; that on June 29, 1945, the postmaster at New York, New York, addressed a letter to affiant advising of the delivery of the memorandum of charges and attaching a receipt signed by a representative of the respondents, certified copy of which letter is attached as Exhibit A–3; that on July 12, 1945, counsel for the respondents wrote a letter to the affiant requesting a 30-day continuance of the hearing date in this matter, certified copy of which letter is attached as Exhibit A–4, and on July 13, 1945, affiant sent the said counsel a letter informing him that the hearing had been continued to August 14, 1945, certified copy of that letter being attached hereto as Exhibit A–5; that on August 3, 1945, counsel addressed

another letter to affiant, certified copy attached as Exhibit A–6, requesting a further postponement of the hearing date, and on August 6, 1945, the affiant wrote a letter to counsel, certified copy attached as Exhibit A–7, informing him that an additional continuance had been granted to September 3, 1945, and that any brief to be submitted should be filed at the conclusion of said hearing.

That on September 3 and 4, 1945, a hearing was held on the charges aforesaid at the place previously designated therefor; that an appearance was made by counsel for the respondent, as well as by certain officials of the respondent concerns; that a general denial of the charges was orally entered at the outset of the hearing; that a post office inspector testified on behalf of the Post Office Department; that five witnesses testified for the respondent; and that a record consisting of 251 typewritten pages was made of the entire proceedings.

That on September 17, 1945, following a careful consideration of the entire record of the case, including the memorandum of charges, transcript of testimony, exhibits, brief of respond-
57 ents, and incidental papers in the case, a memorandum was addressed by affiant to the Postmaster General reviewing said entire record and embodying of finding of fact and recommendation for the issuance of a fraud order; that a certified copy of said memorandum, consisting of 17 pages, is hereto attached as Exhibit A–8; that on October 1, 1945, upon evidence satisfactory to him as by the statutes pertinent thereto provided, the Postmaster General issued a fraud order against Puzzle Contest, Facts Magazine; Contest Editor, Facts Magazine; Judith S. Johnson, Contest Editor; Miss J. S. Johnson, Contest Editor; Contest Editor; Facts Magazine; and Henry Walsh Lee, Editor in Chief, at New York, New York, a certified copy of said fraud order being hereto attached as Exhibit A–9.

That (recapitulating) the respondents were furnished a clear and definite specification which fully apprized them of the nature of the charges against them; that they were given proper notice that a hearing would be held with respect to the charges and were given full and ample time in which to prepare for said hearing; that a full and fair hearing was, in fact, held in said case at which the respondents through their counsel and witnesses presented their defense to the charges drawn; that oral argument was made by respondents' counsel at the conclusion of the hearing and a brief filed two days later; that the fraud order was issued upon the basis of the entire record, including the brief of respondents' counsel.

That for further substantiation of the statement herein made and in addition to the exhibits attached hereto, affiant hereby sub-

mits for examination at the pleasure of the Court all of the correspondence, pleadings, brief, and exhibits involved in the fraud order proceedings.

VINCENT M. MILES,
Solicitor for the Post Office Department of the United States.

Subscribed and sworn to before me, a Notary Public, in and for the District of Columbia, this 16th day of October 1945.

DAVID KISLINK,
Notary Public.

My commission expires March 31, 1946.

68 *Exhibit A–8 to affidavit*

POST OFFICE DEPARTMENT,
OFFICE OF THE SOLICITOR,
Washington, September 17, 1945.

F. & L. Docket 14/393

IN THE MATTER OF CHARGES THAT PUZZLE CONTEST, FACTS MAGAZINE; CONTEST EDITOR, FACTS MAGAZINE; JUDITH S. JOHNSON, CONTEST EDITOR; MISS J. S. JOHNSON, CONTEST EDITOR; CONTEST EDITOR; FACTS MAGAZINE; AND HENRY WALSH LEE, EDITOR IN CHIEF, FACTS MAGAZINE, AT NEW YORK, NEW YORK.

are engaged in conducting a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises, in violation of 39 U. S. Code 259 and 732 (Sections 3929 and 4041 of the Revised Statutes as amended).

MEMORANDUM FOR THE POSTMASTER GENERAL EMBODYING A FINDING OF FACT AND RECOMMENDING THE ISSUANCE OF A FRAUD ORDER.

Under date of June 26, 1945, a copy of the memorandum of charges in this case, on file in this office, against the concerns and parties named in the caption hereof, was forwarded to the postmaster at New York, New York for delivery to the respondents. The memorandum of charges was accompanied with a letter addressed to the concerns and parties named therein, calling upon them to show cause on July 16, 1945, at this office, why a fraud order should not be issued against them. Under date of June 29, 1945, the postmaster advised this office that the memorandum of charges had been delivered to the addressees and a receipt therefor signed by E. Fertel (shown to be Esther Fertel, Treasurer) was obtained by the delivering clerk.

Under date of July 12, 1945, this office received a letter from a Washington law firm entering appearance on behalf of
69 the respondents and requesting a thirty days' postponement of the hearing, which was accordingly continued, until August 14, 1945. Demand for a further continuance was later made, and in response thereto the hearing date was again postponed to September 4, 1945, with the following provision:

"In view of the 69 day period of preparation allowed in this case, which, I am advised, involves a fairly simple set of facts well known to your client, it is requested that you file at the termination of the hearing any brief which you desire to present and also be prepared to then argue the case, if oral argument is desired by you."

The hearing was commenced on Tuesday, September 4, 1945, and concluded next evening. Counsel was granted an additional day to file the brief mentioned above. However, at the conclusion of the hearing the merits of the case both as to the law and the facts were argued before the hearing officer by counsel for the Government and for the respondents. The hearing was attended on behalf of the respondents by Colonel Theodore Artér, President of the Publishers Service Co., Inc., owners of the enterprises; also by Mr. Paul Sarazen, Executive Vice President; Miss Esther Fertel, Secretary-Treasurer; Mr. Henry Walsh Lee, Editor-in-chief of Facts Magazine, and by Mr. F. Harvey Morse, a sales representative of the Reuben H. Donnelley Company. The respondents were also represented by New York and Washington counsel.

The transcript of the proceedings of the hearing, together with all exhibits received in evidence and also exhibits marked for identification but not received in evidence, is by this reference made a part hereof.

In view of the extended continuances, respondents were allowed only one additional day to file their brief, as explained above. The said brief has now been received and considered.

70 The entire record in this case, including the brief of respondents, has been carefully considered before finding the facts and making the recommendations hereinafter appearing, and the same is submitted herewith.

The memorandum of charges alleges that the respondent concerns and parties named in the caption hereof are engaged in conducting a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises as follows:

It is charged that under the above names (set forth in the caption hereof) the Publishers Service Co., Inc., is engaged in

conducting a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations, and promises, in violation of 39 U. S. Code 259 and 732 (Sections 3929 and 4041 of the Revised Statutes, as amended), which said scheme is in substance and effect as follows:

Said concern operating as aforesaid is obtaining and attempting to obtain various remittances of money through the mails from divers persons as fees accompanying solutions submitted in a so-called "Hall of Fame" contest upon pretenses, representations, and promises contained in advertisements and written and printed matter sent through the mails to the effect:

That said "Hall of Fame" contest is a puzzle contest in which the prizes will be awarded for the correct solution of puzzles;

That there exists a probability that the contestant will become a prize winner merely by the submission of correct solutions to the first group of 80 puzzles;

That the only fees to be paid by the contestant, even though it becomes necessary that he participate in the later phases of the contest, are those fees which he submits with his solutions to the first series of puzzles;

Whereas, in truth and in fact, all of the said pretenses, representations, and promises are false and fraudulent.

Post Office Inspector F. D. Boyle, who investigated the use of the mails by respondents, appeared and testified as a witness for the Government. His testimony shows that the respondent
71 corporation, Publishers Service Co., Inc., has been engaged in conducting contests for newspapers, publications, and other customers. Facts Magazine is a division of Read Magazine; and the latter is a subsidiary of Publishers Service Co., as is also another organization known as Literary Classics, Inc. The testimony of the inspector, as well as that given in behalf of respondents by the Secretary-Treasurer of respondent corporation, shows that the officers of the latter also hold the same positions as officers of the above-named and other subsidiary organizations. These officers have heretofore been enumerated.

During recent years, at least since 1941, Publishers Service Co. has largely confined its contest promotional efforts to those contests which were sponsored by itself directly or through its subsidiaries. Such contests include the so-called Music Appreciation Contest conducted in 1941–42 by Music Appreciation, Inc., a subsidiary; All-American Contest in 1942–43; Read Magazine Contest in 1943–44, and the current contest conducted for Facts Magazine and Literary Classics, Inc., known as the "Hall of Fame Contest," commencing in April of 1945.

The so-called "Hall of Fame Contest" which was commenced, as stated, in April 1945, and which is still uncompleted, has been advertised in newspapers and periodicals of national coverage. The advertisements invariably refer to and designate this enterprise as a "Puzzle Contest." A typical advertisement, published April 3, 1945, is photostatically reproduced below:

72 [Photostat.]

73 The April 1945, issue of Facts Magazine (Gov. Ex. 1–A) contains the matter appended hereto in photostatic form.

74 Typical examples of the puzzles offered for solution in the current contest are shown in the attached photostat (Gov. Ex. 1–C).

75 The advertisement of this contest contained in the April 1945 issue of Facts Magazine (Gov. Ex. 1–A) includes the following representation:

WE WILL MAIL YOU ALL THE OTHER PUZZLES IN THE CONTEST

The four puzzles on these two pages comprise Series No. 1 of the contest. Fill in your solutions to these four puzzles on the Official Entry Form which appears on Page 53. Mail your solutions as promptly as possible. Send in only the ENTRY FORM. Do not enclose the puzzles themselves. As soon as we receive your solutions to these 4 puzzles (Series No. 1), we will mail you the additional puzzles.

Persons who remit 15 cents in coin as requested by this advertisement of the contest which appeared in Facts Magazine and other publications are forwarded a 24-page pamphlet of 8 x 11 inches, upon the cover of which appears the legend:

ALL 80 PUZZLES—Official Rules and Details on Inside Pages

START NOW! SEND IN YOUR ENTRY! ANSWER FORMS INSIDE

(Gov. Ex. 1–C.)

Following are photostatic reproductions of the front cover and of pages 2, 3, and 24.

76 [Photostat.]

77 [Photostat.]

78 [Photostat.]

79 [Photostat.]

Solve the 4 Puzzles NOW—Mail Entry By Saturday Night, April 7th

$10,000 FIRST PRIZE—PUZZLE CONTEST



500 Cash PRIZES

1st Prize	$10,000
2nd Prize	$2,000
3rd Prize	$1,000
4th Prize	$500
5th Prize	$250
6th Prize	$250
7th Prize	$250
8th Prize	$150
9th Prize	$100
10th Prize	$100
Next 90 Prizes, each $10	$900
Next 400 Prizes, each $5.00	$2,000
TOTAL	$17,500

Win $10,000, $2,000, $1,000 or Any of 500 Cash Prizes In FACTS Magazine's New, Delightful Puzzle Contest

SOLVE THESE 4 PUZZLES NOW!

Write your solutions on the Entry Form below, and mail the Entry Form on or before Midnight, Saturday, April 7th!

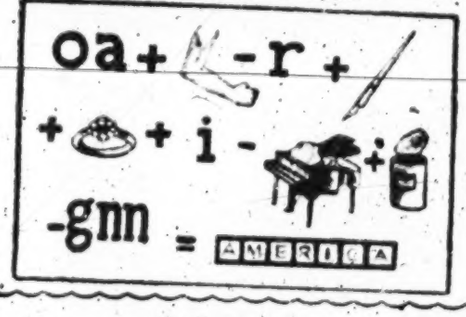
Here's a SAMPLE Puzzle—Just to Give You the Idea—

EXPLANATION

Note this **Sample Puzzle**. Notice the objects illustrated and the plus and minus signs, which mean that you add or subtract.

You see the letters O-A followed by a plus sign after which comes an object that is obviously an ARM. Therefore, to O-A you add the letters A-R-M, which gives you O-A-A-R-M. Then you subtract R as directed, leaving O-A-A-M. Next comes a plus sign followed by a PEN, so you add P-E-N, giving you O-A-A-M-P-E-N, to which you now add RING, plus the letter I, as directed. Thus you have O-A-A-M-P-E-N-R-I-N-G-I, from which you then subtract PIANO. So you cross out the letters P-I-A-N-O, leaving A-M-E-R-N-G-I, to which you add the next object, CAN, or the letters C-A-N, giving you A-M-E-R-N-G-I-C-A-N, from which you finally subtract the letters G-N-N, giving you AMERICA as the solution.

SAMPLE PUZZLE ONLY



FACTS MAGAZINE Invites You To Enter This Puzzle Contest

Accept this cordial invitation from FACTS MAGAZINE to enter its puzzle contest. Here is your opportunity to win $10,000, $2,000, $1,000 or any of 500 cash prizes totaling $17,500.

The puzzles in this contest are divided into 20 Series of 4 puzzles each. You will find the 1st Series (Puzzles 1-4) printed in this announcement. Solve these puzzles and send in your solutions as promptly as possible, on or before Midnight, Saturday, April 7th. When we receive your solutions to Series No. 1, we will mail you FREE the remaining Series of puzzles. The Rules are printed in full below. Please read them carefully and be sure you understand them.

You will find the second Series of puzzles in this contest (Puzzles 5-8) in this newspaper next week. However, in case you miss seeing it, it will of course be included in the remaining puzzles we will mail to you upon receipt of your entry.

First of All:—Study the Sample Puzzle

Study the sample puzzle printed in the upper right portion of this page before trying to solve the first 4 official puzzles. Once you understand how the sample puzzle is solved, you are ready for the first 4 official puzzles.

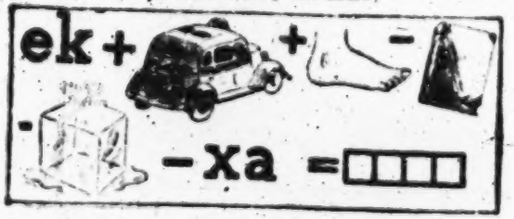
PUZZLE No. 1

(Represents the name of the inventor of the phonograph and electric light.)



PUZZLE No. 2

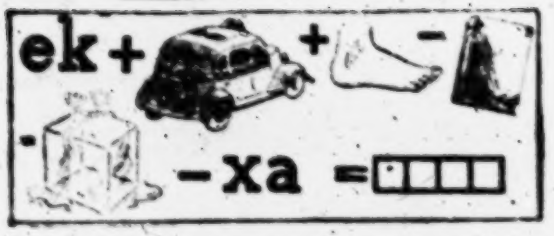
(Represents the name of a Republican President who became Chief Justice of the Supreme Court.)



PUZZLE No. 3

First of All:—Study the Sample Puzzle

Study the sample puzzle printed in the upper right portion of this page before trying to solve the first 4 official puzzles. Once you understand how the sample puzzle is solved, you are ready for the test 4 official puzzles.



PUZZLE No. 3

(Represents the name of a British king whose court is the setting of a book by Mark Twain.)



PUZZLE No. 4

(Represents one of the greatest names in baseball.)



OFFICIAL RULES OF THE CONTEST

1. This contest is open to everybody except employees and relatives of employees of FACTS Magazine or any person or firm directly or indirectly employed in conducting the contest.

2. A Group of 80 puzzles will be offered for solution. The solutions to the puzzles will be names of persons of places, books, movies, plays or songs, in fact any name which the Editors may consider famous.

3. A First Prize of $10,000.00 in cash and 499 other cash prizes totaling $17,500.00, will be paid to the 500 entrants who by their submissions achieve the highest scores in accordance with all of these official rules.

4. The 80 puzzles are divided into 20 Series of 4 puzzles each. Puzzles 1-4 comprise Series Number One. Puzzles 5-8 comprise Series Number Two etc. etc. the Group consisting of 20 Series. Each week contestants are asked to mail their solutions to the puzzles, one or more Series of solutions at a time, on or before Saturday night of each week.

Submit your solutions for Series Number One as promptly as possible. When we receive your solutions for Series Number One, we will mail to you the remaining nineteen Series, as issued. Solutions for these remaining Series are to be submitted in accordance with the 6 consecutive dates printed on each Series. All Series must be qualified in accordance with Rule No. 8.

5. Once you enter the contest, the additional puzzles will be mailed to you as issued. In submitting the solutions to a current Series, the contestant is privileged to submit the solutions for preceding Series. Solutions for the Twentieth Series must be postmarked not later than June 16, 1948. Copies of any publications which may contain any of the puzzles may be examined free at any Public Library, and tracings or copies of the Entry Form or Another Form will be equally acceptable as forms clipped from the magazine or from a newspaper or circular. The Puzzles will be mailed free upon request to the sponsor.

6. Neatness does not count, but SPELLING of the correct solutions is important. Any error in spelling will count against you unless that error is an literal or unintentional that in the minds of the judges there is no shadow of doubt but that you not only correctly solved the puzzle but also submitted the correct name represented by same. FACTS Magazine will not be responsible for submissions or communications undue delayed, or not received, or lost in the mails either from the contestant to FACTS Magazine or from FACTS Magazine to the contestant.

7. This is a contest of skill. Upon entering the contest the contestant agrees that prior to being awarded a prize he or she will sign and execute under oath an affidavit attesting that he or she has not bought or exchanged answers in this contest, nor used answers bought, exchanged or supplied. The contestant further agrees that the decision of the Contest Editor, in all matters affecting the conduct of the contest, the acceptance of submissions, and the time limits established for the acceptance of submissions (under unusual circumstances arising through no fault of the contestant), the making of awards, and the measures invoked to insure individual effort in fairness to all contestants, shall be final and conclusive.

8. To qualify for a prize, the contestant is required to accompany each Series of four solutions with 15 cents in coin. Each contestant who submits a complete Group of solutions for this contest qualified in accordance with the Rules will receive the book selected for the month of July by the Literary Classics Book Club. Any contestant who becomes eligible to submit, and who does submit, a Group of qualified tie-breaking solutions, will receive the following months Book Club selection. Entrants who for any reason drop out of the contest before sending in the complete Group of 80 solutions will receive a set of Quotations by Famous Statesmen.

9. Neatness will not count. Do not decorate your answers. Just submit your solutions in accordance with the rules. In case of ties, if two or more persons tie in submitting the correct solutions, then the first two or more prizes will be reserved for those contestants and will be awarded in the order of accuracy of the submissions of those contestants to a first, and if necessary, a second, tie-breaking group of puzzles, divided into Series exactly like the first Group. In case a second tie-breaking Group of puzzles is necessary, contestants eligible to solve same will be required to accompany their solutions to this second tie-breaking Group of puzzles with a letter of not more than 200 words on the subject: "The Puzzle I Found Most Interesting and Educational in This Contest." All tie-breaking Series must be qualified in accordance with the provisions of Rule No. 8. Only in case ties exist after such final tie-breaking puzzles have been checked will the letters be considered, and in that event they will be judged on the basis of originality in description and general interest. In case of final ties, duplicate prizes will be awarded. Upon entering the contest, the contestant is asked to realize that the sponsor anticipates that a large number of persons may enter the contest and that a large number may solve one, two or all three of the Groups of puzzles, and that the sponsors will not make known the number of persons competing in any phase of the contest, irrespective of how large or how small that number may be. FACTS Magazine reserves the right to offer contestants the opportunity to win increased prizes, or to offer consolation prizes or additional prizes at any time prior to the conclusion of the contest.

10. All solutions should be forwarded by mail and addressed to Puzzle Contest, FACTS Magazine, P.O. Box 324, Church Street Post Office Annex, New York 8, N. Y.

MAIL YOUR SOLUTIONS BY MIDNIGHT, SATURDAY, APRIL 7th

Your solutions to Series No. 1 should be filled in on the Entry Form at the bottom of this page and mailed as promptly as possible before Midnight, Saturday, April 7th.

Please be careful in copying your solutions on to the Entry Form. FACTS MAGAZINE wants to do everything within its power to make this contest the most delightful and the most efficiently conducted in which you have ever taken part. Please co-operate with us. Please write or print your name and address clearly and legibly.

ENCLOSE 15c WITH EACH SERIES

To qualify your solutions for a prize, as provided under the Rules, enclose 15 cents in coin with each Series of four puzzle solutions. Coins should be wrapped carefully in a small piece of paper. In return for the remittances for the twenty Series, you will receive the book issued by the Literary Classics Book Club as per the Rules. This contest with FACTS MAGAZINE as sponsor, is being presented as a means of popularizing the Literary Classics Book Club.

WE'LL MAIL YOU REST OF PUZZLES UPON RECEIPT OF YOUR ENTRY

FACTS MAGAZINE will mail you FREE all of the remaining puzzles in the contest as soon as we receive your Entry Form with your solutions to Puzzles 1-2-3-4. In enclosing 15 cents as called for under the Rules, please wrap same in a small piece of paper before enclosing in the envelope. More than one member of a family can compete, and a tracing of the Entry Form will be equally as acceptable as the printed ENTRY FORM. The only persons barred from entering the contest are employees and relatives of employees of FACTS MAGAZINE and its various affiliated publishing companies.

MAIL YOUR ENTRY PROMPTLY

Not Later Than Midnight, Saturday, April 7th

Copyright, 1948, Literary Classics, Inc.

Mail Before Midnight, Saturday April 7th

Cut Along Dotted Line

OFFICIAL ENTRY FORM

Puzzle Contest
FACTS MAGAZINE
P. O. Box 324, Church St. Annex
New York 8, N. Y.

Date _____

I submit the following as my solutions to Puzzles 1-4 in your Puzzle Contest:

1. _____ 3. _____

2. _____ 4. _____

I enclose 15 cents in coin to qualify me for a prize in accordance with the official rules.

My Name (Check Which) { Mr. / Mrs. / Miss } _____

Address _____

City _____ State _____

SERIES No. 1

Mail as promptly as possible. Upon receipt of this Entry Form, the additional puzzles will be sent you.

759707 O - 47 (Face p. 36) No. 1

Facts Magazine WILL PAY

A FIRST PRIZE OF $10,000 CASH

500 CASH PRIZES

FIRST PRIZE	$10,000.00
SECOND PRIZE	$2,000.00
THIRD PRIZE	$1,000.00
Fourth Prize	$500.00
Fifth Prize	$250.00
Sixth Prize	$250.00
Seventh Prize	$250.00
Eighth Prize	$150.00
Ninth Prize	$100.00
Tenth Prize	$100.00
Next 90 Prizes, each $10.00	$900.00
400 Additional Prizes, each $5.00	$2,000.00
Total	$17,500.00

The "Hall of Fame"

PUZZLE CONTEST

Accept this cordial invitation from FACTS to enter its puzzle contest. Here is your opportunity to win $10,000, $2,000, $1,000 or any of 500 cash prizes totaling $17,500.

The puzzles in this contest are divided into 20 Series of 4 puzzles each. You will find the 1st Series (Puzzles 1-4) on the next two pages. Solve these puzzles and send in your solutions *as promptly as possible.* When we receive your solutions to Series No. 1, we will mail you the remaining Series of puzzles. The Rules are printed in full on Page 52. Please read them carefully and be sure you understand them.

First of All:— Study the Sample Puzzle Printed at the Right

Study the sample puzzle and explanation on Page 49 before trying to solve the first 4 official puzzles. Once you understand how the sample puzzle is solved, you are ready for the first 4 official puzzles printed on pages 50 and 51.

Mail Your Solutions as Promptly as Possible

Your solutions to Series No. 1 should be filled in on the Entry Form printed on page 53, and mailed as promptly as possible. We will mail you the remaining puzzles of the contest, with dates for submitting solutions to the various Series, as soon as we receive your Entry Form.

Enclose 15¢ With Each Series

To qualify your solutions for a prize, as provided under the Rules, enclose 15 cents in coin with each Series of four puzzle solutions. Coins should be wrapped carefully in a small piece of paper. In return for the remittances for the twenty Series, you will receive the book issued by the Literary Classics Book Club as per the Rules.

Can You Solve This Puzzle?

(IT'S A SAMPLE PUZZLE TO EXPLAIN THE IDEA— SEE EXPLANATION BELOW THE PUZZLE.)



EXPLANATION

Note this Sample Puzzle. Notice the objects illustrated and the plus and minus signs, which mean that you add or subtract.

You see the letters O-A followed by a plus sign after which comes an object that is obviously an ARM. Therefore, to O-A you add the letters A-R-M, which gives you O-A-A-R-M. Then you subtract R as directed, leaving O-A-A-M. Next comes a plus sign followed by a PEN, so you add P-E-N, giving you O-A-A-M-P-E-N, to which you now add RING, plus the letter I, as directed. Thus you have O-A-A-M-P-E-N-R-I-N-G-I, from which you then subtract PIANO. So you cross out the letters P-I-A-N-O, leaving A-M-E-R-N-G-I, to which you add the next object, CAN, or the letters C-A-N, giving you A-M-E-R-N-G-I-C-A-N, from which you finally subtract the letters G-N-N, giving you AMERICA as the solution.

Contest Is to Popularize Book Club

This contest is being presented as a means of popularizing the Literary Classics Book Club, and those who submit complete Groups of the 20 Series of puzzle solutions, qualified in accordance with the Rules, will receive books issued by the Club as per the Rules.

FIRST 4 OFFICIAL PUZZLES ON NEXT 2 PAGES

759707 O - 47 (Face p. 38) No.2

SERIES NO. 1

INSTRUCTIONS:—Puzzles 1-4, printed on this page, comprise Series No. 1 of the contest. Fill in your solutions to these four puzzles on the Official Entry Form printed on this page to the left of the puzzles. Mail your Entry Form as promptly as possible. We will immediately write you confirming your entry in the contest. Send in only the ENTRY FORM—not the puzzles themselves. Remember to enclose 15 cents in coin, as required under the rules to qualify your solutions for a prize. Please be careful of your spelling when you copy your solutions on the Entry Form.

INSTRUCTIONS:

Fill in your solutions to Puzzles 1-4 on the ENTRY FORM below. Do not send in the puzzles—send only the Entry Form. Enclose 15 cents in coin with this Entry Form. Please wrap coin carefully in a small piece of paper before inserting in envelope.

After you have solved Puzzles 1-4, proceed with Puzzles 5-8 (Series No. 2) printed on the next page. Your solutions to Series No. 2 should be sent in within a week following the time you mail your solutions to Series No. 1. If you wish to send in Series No. 1 and Series No. 2 together, that is permissible, but in that case please bear in mind that each Series of 4 solutions must be accompanied by 15 cents in coin.

Please be careful of your spelling.

(Cut Along Dotted Line)

OFFICIAL ENTRY FORM

Puzzle Contest, FACTS MAGAZINE
P. O. Box 424, Church St. Annex
New York 8, N. Y.

I submit the following as my solutions to Puzzles 1-4 in your Puzzle Contest:

1 _____
2 _____
3 _____
4 _____

I enclose 15 cents in coin to qualify me for a prize in accordance with the official rules.

(Check One) Mr. / Mrs. / Miss

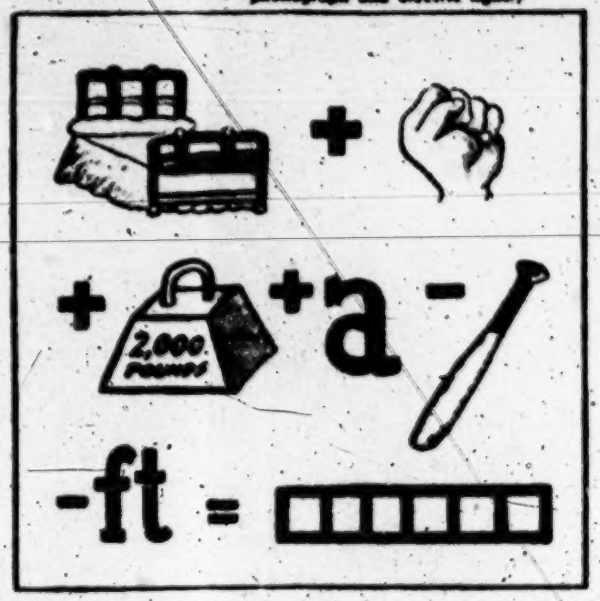
NAME _____

ADDRESS _____

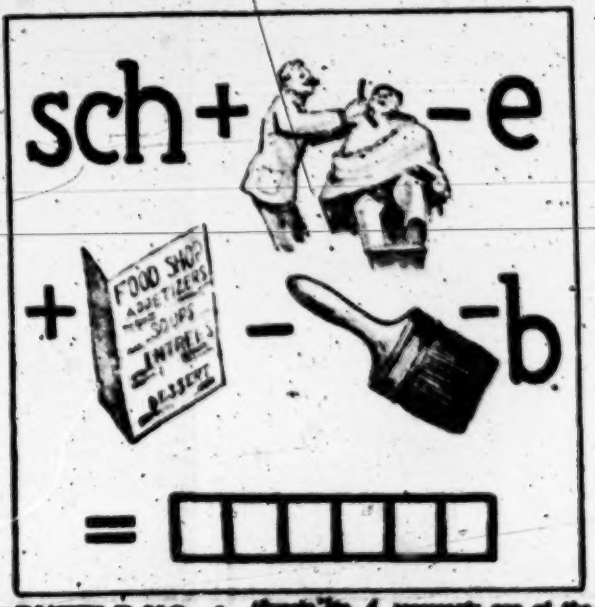
CITY _____ STATE _____

★ SERIES No. 1 ★

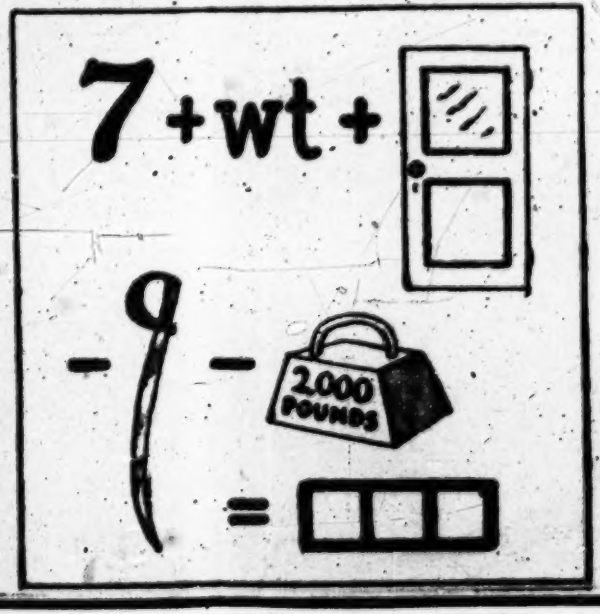
PUZZLE NO. 1 *(Puzzle No. 1 represents the name of a great inventor, responsible for the phonograph and electric light.)*



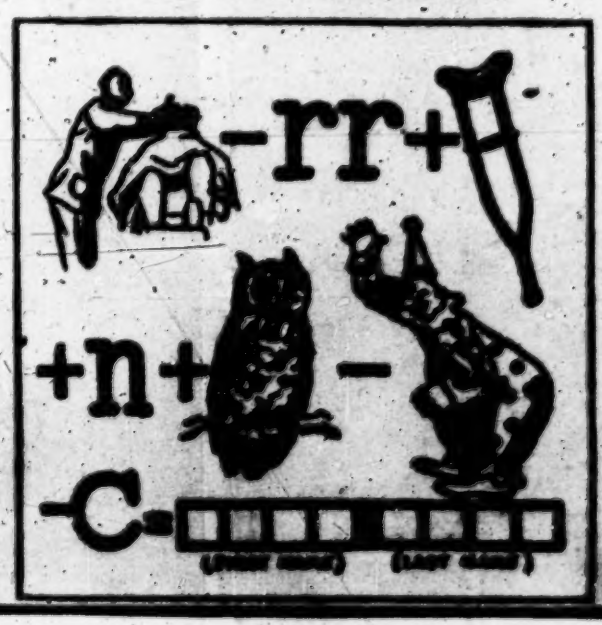
PUZZLE NO. 16 Name of an opera and its heroine.



PUZZLE NO. 64 She was created from a man's rib.



PUZZLE NO. 4 *(Puzzle No. 4 represents one of the greatest names in baseball.)*



Your Opportunity to Win $10,000... and Enjoy Solving Puzzles!

HALL of FAME PUZZLE CONTEST

5¢

Can You Solve This Puzzle? →

(READ THIS EXPLANATION)

(SAMPLE PUZZLE)



Read carefully the explanation to the left. Be sure you understand how to proceed in solving these puzzles. There are 10 you can solve (50 official puzzles besides this booklet). Submit your solutions in accordance with the rules and give yourself the opportunity to win $10,000.00 or any other of the 500 cash prizes.

YOU CAN WIN $10,000.00

FIRST PRIZE

500 CASH PRIZES

Solve the Puzzles and Find the Famous Names They Represent

This Contest Sponsored by Facts MAGAZINE of the Literary Classics Book Club

ALL 60 PUZZLES — Official Rules and Details on Inside Pages

Start Now! Send In Your Entry! Answer Forms Inside

Copyright, 1942, by Literary Classics, Inc.

THE OFFICIAL RULES

1. This contest is open to everybody except employees and relatives of employees of FACTS Magazine or any person or firm directly or indirectly employed in conducting the contest.

2. A Group of 80 puzzles will be offered for solution. The solutions to the puzzles will be names of persons or places, books, movies, plays or songs, in fact any name which the Editors may consider famous.

3. A First Prize of $10,000.00 in cash and 499 other, cash prizes, totaling $17,500.00, will be paid to the 500 entrants who by their submissions achieve the highest scores in accordance with all of these official rules.

4. The 80 puzzles are divided into 20 Series of 4 puzzles each. Puzzles 1-4 comprise Series Number One, Puzzles 5-8 comprise Series Number Two, etc., etc., the Group consisting of 20 Series. *Each week* contestants are asked to mail solutions to the puzzles, one or more Series of solutions at a time, *on or before Saturday night of each week.*

Submit your solutions for Series Number One as promptly as possible. Solutions for the remaining Series are to be submitted in accordance with instructions with regard to mailing dates printed on each Series. All Series must be qualified in accordance with Rule No. 8.

5. In submitting the solutions for a current Series, the contestant is privileged to submit the solutions for preceding Series. Solutions for the Twentieth Series must be postmarked not later than June 16, 1945. Copies of any publication which may contain any of the puzzles may be examined free at any Public Library, and tracings or copies of the Entry Form or Answer Forms will be equally acceptable as forms clipped from the magazine or from a newspaper or circular. The Puzzles will be mailed free upon request to the sponsor.

6. Neatness does not count, but SPELLING of the correct solutions is important. Any error in spelling will count against you unless that error is so trivial or irrelevant that in the minds of the judges there is no shadow of doubt but that you not only correctly solved the puzzle but also submitted the correct name represented by it. FACTS Magazine will not be responsible for submissions or communications unduly delayed, or not received, or lost in the mails either from the contestant to FACTS Magazine or from FACTS Magazine to the contestant.

7. This is a contest of skill. Upon entering this contest, the contestant agrees that prior to being awarded a prize, he or she will sign and execute under oath an affidavit attesting that he or she has not bought or exchanged answers in this contest, nor used answers bought, exchanged or supplied. The contestant further agrees that the decision of the Contest Editor in all matters affecting the conduct of the contest, the acceptance of submissions, and the time limits established for the acceptance of submissions under unusual circumstances arising through no fault of the contestant, the making of awards, and the measures invoked to insure individual effort in fairness to all contestants, shall be final and conclusive.

8. To qualify for a prize, the contestant is required to accompany each Series of four solutions with 15 cents in coin. Each contestant who submits a complete Group of solutions for this contest qualified in accordance with the Rules will receive the book selected for the month of July by the Literary Classics Book Club. Any contestant who becomes eligible to submit, and who does submit, a Group of qualified tie-breaking solutions, will receive the following month's Book Club selection. Entrants who for any reason drop out of the contest before sending in the Group of 80 solutions will receive a set of Quotations by Famous Statesmen.

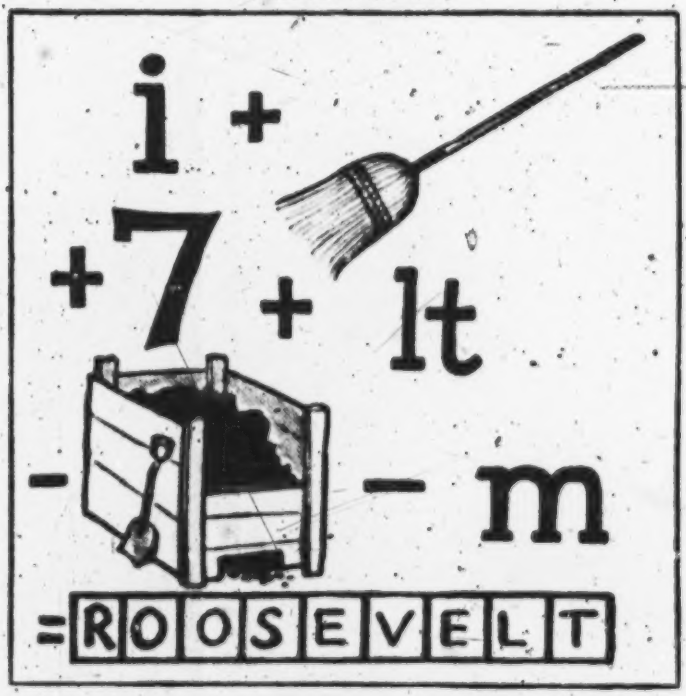
9. Neatness will not count. Do not decorate your answers. Just submit your solutions in accordance with the rules. In case of ties, if two or more persons tie in submitting the correct solutions, then the first two or more prizes will be reserved for those contestants and will be awarded in the order of accuracy of the submissions of those contestants to a first, and if necessary, a second, tie-breaking group of puzzles, divided into Series exactly like the first Group. In case a second tie-breaking Group of puzzles is necessary, contestants eligible to solve same will be required to accompany their solutions to this second tie-breaking Group of puzzles with a letter of not more than 200 words on the subject "The Puzzle I Found Most Interesting and Educational in This Contest." All tie-breaking Series must be qualified in accordance with the provisions of Rule No. 8. Only in case ties exist after such final tie-breaking puzzles have been checked will the letters be considered, and in that event they will be judged on the basis of originality in description and general interest. In case of final ties, duplicate prizes will be awarded. Upon entering the contest, the entrant is asked to realize that the sponsor anticipates that a large number of persons may enter the contest and that a large number may solve one, two or all three of the Groups of puzzles, and that the sponsors will not make known the number of persons competing in any phase of the contest, irrespective of how large or how small that number may be. FACTS Magazine reserves the right to offer contestants the opportunity to win increased prizes, or to offer consolation prizes or additional prizes at any time prior to the conclusion of the contest.

10. All solutions should be forwarded by mail and addressed to Puzzle Contest, FACTS Magazine, P. O. Box 324, Church Street Post Office Annex, New York 8, N. Y.

EXPLANATION

How to Solve the Puzzles

(SAMPLE PUZZLE)



THE puzzle above is just a SAMPLE PUZZLE. It doesn't count in the contest. It is one of several Sample Puzzles printed in this booklet just to give you the idea of the contest. The 80 *official* puzzles appear on Pages 4 through 25.

Let's solve this Sample Puzzle together! Let's take note, first of all, that there are various objects and letters shown in the puzzle, with plus and minus signs that tell whether to add or subtract.

First thing we see in this puzzle is the letter I, to which you are directed to add an object we recognize instantly as a BROOM. Therefore we put down the letters I-B-R-O-O-M. Next we are told to add S-E-V-E-N. And that gives us I-B-R-O-O-M-S-E-V-E-N, to which we add still another two letters, L and T, as indicated. Altogether, therefore, we thus far have I-B-R-O-O-M-S-E-V-E-N-L-T.

Then we look to see what we're to do next. Well, the puzzle tells us to subtract what is obviously a BIN. So we cross out the letters B-I-N and then also take away the letter M, as directed, and we find that the letters left are: R-O-O-S-E-V-E-L-T—which, of course, means that the name Roosevelt is the correct solution to this Sample Puzzle.

Get the idea? Then see what you can do about solving the official puzzles on the following pages—80 puzzles that can lead you to a winning of as much as $10,000, simply by sending in your solutions in accordance with the rules as printed on this page.

Turn to the Official Puzzles Starting on Page 4

In This Booklet You Have

80 PUZZLES...LIST of PRIZES...ANSWER FORMS...RULES

Read These Instructions Carefully!

How You Proceed:

YOU HAVE the opportunity to win $10,000, $2,000, $1,000, or any of 500 cash prizes in this contest. FACTS MAGAZINE invites you to enter this contest and assures you that your solutions to the puzzles and everything concerning your entry will receive prompt, accurate and efficient consideration.

By reading these instructions carefully, and by following the rules, you will know exactly what to do in order to give yourself the best possible opportunity to win.

Can You Solve the 80 Puzzles?

There are 80 puzzles in this booklet. *Can you solve them?*

We suggest that before you try to solve the 80 official puzzles, you study carefully how the sample puzzle was solved on the front page of this booklet. Also, study the solution of the sample puzzle on the page at the left. Remember, the solutions to these puzzles will represent NAMES—names of persons, places, movies, books, plays, songs, in fact, all kinds of names.

How You Send In Your Solutions

THE 80 puzzles are divided into 20 Series of 4 puzzles each. A Series consists of 4 puzzles.

In this contest, you send in your solutions for one or more Series each week, in accordance with the dates specified for the various Series. An ANSWER FORM is provided for each Series. If you wish to send in your solutions faster than the dates specified, that is permissible. You can mail as many Answer Forms in the same envelope as you wish. Thus, it is entirely permissible to send in your solutions in advance of the dates specified in which event there may be some weeks in which you will not be mailing solutions due to the fact that you have previously mailed the solutions for such weeks.



Neatness Does Not Count
Do Not Decorate Your Solutions

IN THIS contest, neatness does not count. Therefore, there is no point in decorating your answers. Please do not do so.

PLEASE WRITE OR PRINT CLEARLY

May we specially *emphasize* that you print or write your solutions; as well as your name and address as LEGIBLY AND CLEARLY AS POSSIBLE. This is vitally important to the sponsors in their effort to see that this contest is conducted as fairly, as accurately and as efficiently as possible. Also, please be careful in copying your solutions on the answer forms.

Regarding Solutions

When a black square appears in the diagram containing the spaces for the solution inside the puzzle, that black square simply indicates that there is a separation between a first and last name or between initials. Also, *remember* that each object illustrated in a puzzle is a *single* word. Hyphenated words or compound terms are NOT used. *For instance*, a rocking chair is a rocker. Webster's New International Dictionary, 2nd Edition, is final authority in these matters.

Enclose 15 Cents In Coin
With Each Series of Solutions



WHEN SENDING in each Series of solutions, the rules require that you enclose 15 cents in coin. Please wrap coins in a small piece of paper before inserting in envelope. In return for your remittances as provided in the rules you will receive the book issued by the Literary Classics Book Club. Literary Classics' purpose in this contest with FACTS MAGAZINE as sponsor is to popularize its book club.

Send In Your Solutions
As Promptly As Possible

YOU NOW HAVE the 80 puzzles, the dates for submitting solutions, and all rules and details. Send in your solutions as promptly as possible. Try to win $10,000, $2,000, $1,000 or any of 500 prizes. Address your envelope to PUZZLE CONTEST, Facts Magazine, Post Office Box 324, Church Street Post Office Annex, New York 8, N. Y.

THE PRIZES

1st Prize	$10,000
2nd Prize . . .	$2,000
3rd Prize . . .	$1,000
4th Prize	$500
5th Prize	$250
6th Prize	$250
7th Prize	$250
8th Prize	$150
9th Prize	$100
10th Prize	$100
Next 90 Prizes each $10	$900
Next 400 Prizes, each $5.00 . . .	$2,000
Total . .	**$17,500**

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BIG CASH PRIZES TO BE WON!

You Can Win $10,000-$2,000-$1,000-$500 or any of 500 Prizes!

This Puzzle Contest Is Your Opportunity to Win $10,000!

Can You Solve This Puzzle?

READ THIS EXPLANATION

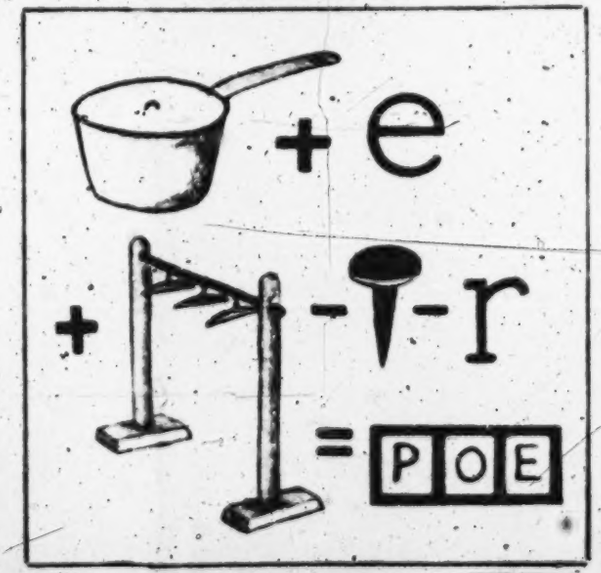
Just so you'll know how to proceed in solving the puzzles of this contest — and winning $10,000.00 or any other of the 500 prizes — let's try solving this puzzle together.

Note, first of all, that there are various objects and letters, as well as plus and minus signs which tell you whether to add or subtract.

First thing we see is a POT. So we write down the letters P-O-T, adding the letter E as directed, after which we add RACK, which is illustrated. That gives us P-O-T-E-R-A-C-K.

Next we are told to subtract what is obviously a TACK. So we cross out the letters T-A-C-K, leaving us P-O-E-R, from which we are finally instructed to take away R, which we do to discover that the correct solution to this puzzle is the last name of the famous author, Edgar Allen POE.

(SAMPLE PUZZLE)



THERE'S OPPORTUNITY in the pages of this booklet — opportunity to win $10,000.00, $2,000.00, $1,000.00 or any other of 500 cash prizes to be paid to those who achieve the highest scores in solving the puzzles of this contest in accordance with the rules.

Look these puzzles over. But first, study the SAMPLE PUZZLE shown at the left. Read the explanation accompanying it. Be sure you understand how you go about solving these puzzles. When you're sure that you have the idea, turn to the 80 official puzzles inside this booklet.

Each puzzle represents a famous name. The name may be that of a person, place, book, movie, play or song — in fact, any kind of name. By finding the name each puzzle represents, and sending in your solutions in accordance with the rules of the contest (as printed on page 2 of this booklet), you give yourself the opportunity to win as much as TEN THOUSAND DOLLARS!

Enter this contest NOW!

THE 80 OFFICIAL PUZZLES AND ANSWER FORMS Are Printed Inside

80 Consideration of the exhibits above described shows them to be convincing proof that this enterprise up to this stage thereof was presented to potential participants simply as a "puzzle contest." The language of the advertisements already quoted herein, as well as the oft-repeated statements to the effect that the contestant can win $10,000 by solving the puzzles are not negatived or explained away by any other language contained in the Rules of the contest or in any other written or printed matter furnished to the entrants. Reference to any feature other than puzzles to be considered by the participants in this contest is found only by close examination of the Rules, which represent that upon the occurrence of what appears to be a remote con[redacted] the contestant will be called upon to submit a letter up[redacted] subject "The Puzzle I Found Most Interesting and Educational in This Contest."

The evidence shows that approximately 90,000 persons completed the 80 puzzles contained in the above-described "puzzle contest" pamphlet Gov. Ex. 1–C. Inasmuch as 35,000 of these persons correctly solved all of the rebus puzzles, no entrant won the $10,000 first prize, or any other prize offered for the solution of the aforesaid puzzles. The evidence in this case shows further that this result is in line with parallel past experiences of respondents in conducting the rebus contest known as the All American contest. In the All American contest, which resulted in the receipt through the mails by the Publishers Service Co. of approximately $1,500,000, about 87 percent were accepted as having completed the first set of puzzles correctly.

The 35,000 persons who correctly completed "all 80 puzzles" were duly notified of this fact by the respondents by letters and thereafter received by registered mail the so-called "Tie-Breaker" set of puzzles, 80 in number.

81 The circular containing these "Tie-Breaker" puzzles now states the fact that should have been clearly set forth by the promoters at the outset, namely, that the entrant is required to pay an additional $3.00 for the privilege of submitting solutions to the "Tie-Breaking" puzzles in order to remain in the contest (Gov. Ex. 10–F–6). He is also advised that upon payment of such fee he will "receive the August selection of the Literary Classics Book Club." The Club is simply a term used by the respondents, and no club exists in fact except for the purposes of exploiting the participants in this contest. The so-called "Tie-Breaker" puzzles are as simple and as easy to solve as those contained in the original booklet of "all 80 puzzles." This appears to be motivated by the promoters' desire for as many ties as possible with a correspondingly larger number of additional second

tie-breaker fees and double and quadruple prize entry fees which together with the original $3.00 fee may total as high as $45.00 per contestant. This is amply demonstrated by the fact that 27,000 of the 35,000 "tied" solved the first "tie-breaking" puzzles and thus became eligible to further participate in the "Hall of Fame Puzzle Contest," which they may do by furnishing the solutions to another series of 80 puzzles, with which must be paid an additional $3.00 fee in order to continue the participant's eligibility to win the $10,000 first prize.

Throughout the contestant's participation in this so-called "puzzle contest" up to this stage thereof, the fiction is maintained that the prizes may be won by those who correctly solve
82 all of the simple rebus puzzles sent them by the promoters.

However, the evidence in this case shows that beginning with the year 1941 (since which time all of the puzzle contests conducted by the Publishers Service Company have been solely for the benefit of that company and its subsidiaries) none of the rebus contests promoted by Mr. Sarazen and his associates have been won by the solution of the puzzles alone. Prior to that time contests were operated by this firm only as promotional schemes for other interests. The Music Appreciation, All American, and Read contests, which also were presented to the public as rebus puzzle contests, were finally decided not upon the basis of correct solutions to the puzzles by one person or by a number of persons submitting a lesser number of correct solutions than the first prize winner. All of said contests, which Mr. Sarazen testified were similar in pattern to the one here involved, were finally decided upon the basis of the best letter or essay written by the ultimately successful contestant. It was freely admitted at the hearing in this case that respondents anticipate and, in fact, planned that the current so-called "Hall of Fame Puzzle Contest" will similarly be decided upon the basis of the best letter written and not upon the basis of the correct solutions of the puzzles. It is therefore apparent from the evidence in this case, and I so find, that respondents knowingly and falsely represented to persons solicited to participate in the "Hall of Fame Puzzle Contest" that they could and would win the prizes offered by submitting the most correct solutions to the "all 80 puzzles" and later to the tie-breaking puzzles, whereas, in truth and in fact, as they well knew, such representations were untrue and this contest can only be won by solving all the puzzles and, in addition, writing what will finally be adjudged the best letter on the subject "The Puzzle I Found Most Interesting and Educational in This Contest." In other words, the contest is one in which the winners will be those who are the best letter writers.

83 The fact that the contest might be decided by a best letter is mentioned in the official rules only as a remote contingency, whereas, in truth, it was an inevitable certainty from the very beginning of the contest, as the respondents well knew.

As an additional device whereby remittances are obtained from the contestants, the promoters of the "Hall of Fame" contest have employed a so-called "double prize" feature, in connection with which the contestant is sent a "Form for Specifying Prize Eligibility" (Gov. Ex. 11–C). By the payment of a fee of $12.00 over and above the fee of $3.00 to accompany the puzzle submissions, the contestant becomes eligible for a $20,000 prize instead of the originally stated $10,000 in the event his entry is finally adjudged as the best. In the same manner, if the contestant remits $6.00, his first prize, if any, is to be increased to $15,000. These extra-remittances are described as being for the purpose of purchasing "subscriptions" in the Literary Classics Book Club for a period of four months or for a shorter period of two months, and the offer to increase the prizes in this manner is offered merely as "a marvelous opportunity" and not as an "obligation." However, it is seen from the content of the letter of transmittal (Gov. Ex. 11–B) that a definite effort is made to put the contestant in such a state of mind that he is left with the impression his failure to submit the "Prize Eligibility" form will jeopardize his opportunity to continue in the contest. The said letter informs the recipient:

This Prize Eligibility Form requires your signature in two places to enable you to become eligible to compete for as much as $20,000 or $15,000 as First Prize in accordance with the terms of the double prize offer, and in addition, provides the necessary spaces for signifying acceptance of the terms of the offer.

84 This Form and any extensions applying to same *must become a part of your file in the contest, and we will thank you to fill in same and mail to us within five days after receipt by you if possible, or earlier if you can do so.*

* * * * * *

The Prize Eligibility Form should be filled in and mailed back to us within five days after you receive same if possible, or earlier if you can do so. The special mailing envelope enclosed herewith should be used for returning the Prize Eligibility Form. Please enclose in the same envelope the proper remittance for the Book Club memberships you send in. We will appreciate it if you will mail back the Prize Eligibility Form to us as soon as possible, because, again, *I would like to point out that it must become a part of your file in the contest.* [Italics supplied.]

The above-described "Prize Eligibility Form" is forwarded to the contestant after he has been advised that his solutions to the

first 80 puzzles were found to be correct, but that he is "tied" and therefore it will be necessary for him to solve and submit the "tie-breakers." After his solutions to the "tie-breaking" puzzles are found to be correct, the contestant is so advised, being told at the same time that he is still "tied" and that the "final tie-breaking puzzles are now being prepared." With this information he is also advised that another opportunity is being afforded him to increase the size of his prize money, and this time the first prize is increased to $40,000. In order to become eligible for a prize of this amount it is necessary for the contestant to submit additional fees totaling $24.00, assuming that he had previously complied with the $20,000 prize offer. Four different letters, on four consecutive days, are sent to the participant concerning this second extra-prize offer (Gov. Ex. 10–G, 10–H, 10–I, 10–K) urging
85 him to take advantage of said offer by signing in the proper place and remitting fees in the proper amount. After being told in these communications that he should not sign the so-called "Appendage" (Gov. Ex. 10–J) unless he is genuinely interested in obtaining the books from the Book Club, that he should not do so merely to increase his possible prize money, the contestant is informed in the penultimate paragraph of the last of the group of four letters:

> Permit me to point out once more that the Appendage *must become part of your file in the contest, and must be mailed back to us*, postmarked before Midnight, Saturday August 25th. [Italics supplied.]

The participant enters the contest upon the basis of representations and rules which lead to the belief that he will have to pay only a total of $3.00 for the privilege of solving "all 80 puzzles." However, as the contest continues through its succeeding stages he is called upon by the promoters for ever-increasing remittances, amounting at this stage of the enterprise to as much as $42.00. If he resists the demands or invitations to pay the additional sums necessary to qualify him for the double and quadruple prizes, he will nevertheless be compelled to remit a total of $9.00 in order to remain in the contest up to and through the final stages, a fact which is not revealed to the participants at the outset. Aside from the failure of the promoters of this enterprise to make a clear and frank statement of what demands will be made upon the contestant and of the ultimate basis of prize awards, the rules which respondents claim contain this information are obscurely and ambiguously phrased. They are plainly calculated to conceal the true facts, which might discourage any
86 potential contestant from entering the contest. It is apparent that respondents' contest promotional experiences

have demonstrated the financial advantages of using such obscurely worded rules. To plainly state the proposition to persons solicited to enter the contest would limit entrants to those who were convinced of their superior essay-writing abilities, whereas, the lure in the present case is to persons who, finding the "All 80 puzzles" so obviously simple of solution, believe themselves entirely capable of winning the $10,000 prize merely by submitting such correct solutions and paying the small sum of $3.00 in weekly remittances of 15 cents each. Even those who most scrupulously study the so-called "Official Rules" and consider their content in connection with the other representations printed in juxtaposition thereto could not divine the facts which are well known to the promoters but not to the contestants: namely that participation costs more than $3.00; that so-called "tie-breakers" are inevitable, and that the contest can be won only by the person writing the best letter upon the subject "The Puzzle I Found Most Interesting and Educational in This Contest," with respect to which it is stated that "only in case ties exist after such final tie-breaking puzzles have been checked will the letters be considered * * *."

Upon the basis of the whole record in this case I find that deception of the contestant is the essence of the scheme.

That the representation was made by the promoters that "there exists a probability that the contestant will become a prize winner merely by the submission of correct solutions to the first
87 group of 80 puzzles" is clearly evidenced by the exhibits introduced by the Government. Among other statements made to the contestant is the one that "The contest closes June 16th, 1945" (Gov. Ex. 7–B) this being the final date for the submission of the first 80 puzzles. In the same exhibit the contestant is told that the winners' names will be announced "after the contest is closed." If the prospective contestant examines the rules he again finds representations that there is a probability that the contest will close with the judgment of the first 80 puzzles. The promoters use such language as "In case of ties," "if two or more persons tie in submitting the correct solutions," stating that in that event only will the contestant have to solve a tie-breaking group of puzzles. Only in the rules does the potential contestant find any reference to the "tie-breakers," and the need for submitting solutions to them is spoken of merely as a remote possibility. The truth of the matter is, as the promoters well knew, that thousands of contestants would inevitably tie not only in their solutions to the first 80 puzzles but in their solutions to the so-called "tie-breaking" puzzles as well. The Secretary-Treasurer of the respondent corporation testified that 35,000 persons were

"tied" in their solutions to the first 80 puzzles and 27,000 "tied" in their solutions to the second or "tie-breaking" group of puzzles. In the "All American" contest previously conducted by this corporation, at least 95,000 entrants submitted correct solutions to the first group of puzzles (similar to those here involved) and were permitted to participate in the second phase of that contest. The greater the number of "ties" the more profitable this so-called "puzzle contest" is to its promoters.

88 In oral argument, as well as by brief, stress has been placed by respondents' counsel upon their contention that the official rules of the contest as they appear in certain of the exhibits clearly describe the contest as it is actually operated, and that a study of those rules disproves all of the charges brought by the Government in this case. It would appear from various statements by counsel that no consideration at all is to be given to the remainder of the advertising matter distributed by the respondents concerning this contest, to determine what representations were made relative thereto. Several citations were offered by Government counsel of court cases in which was found judicial definition with respect to fraud as applied to the mail fraud statutes, all of which citations show it to be the consistent holding of the courts that not only one small part of an advertiser's representations is to be considered in determining whether there is fraud present, but that consideration must be given to the representations in their entirety.

In Barnhill vs. U. S. (90 Fed. 2d, 116), it was stated by the court that "a representation may be made expressly or it may be gathered from the whole tenor or partially so from the entire writing or language used. Representations made are those which are intended by the party to be acted upon by those to whom it may be addressed," and the jury was instructed that "fraud or deception to justify conviction for using the mails to defraud may be by implication reasonably derived by the reader of the representations made as well as by the express words." In the case of Farley vs. Simmons (99 Fed. 2d, 343), the court ruled that "an advertisement so worded that it does not make an express misrepre-

89 sentation but artfully designed to mislead those responding to it is subject to the mail fraud statute." Examination of the respondents' advertisements, including those photostatically reproduced herein, shows how frequently and emphatically contestants were told they could win prizes by solving the puzzles, without being warned that the awards would actually be based upon the best letters submitted. Deception was thus practiced upon the contestant as averred in the memorandum of charges in this case.

Moreover, even when consideration is given to the rules alone, without regard to the other representations made by the respondents, it is seen that fraud and deception are practiced thereby upon the prospective contestants.

I find from a consideration of all the evidence before me in this matter that the respondents at the outset knew and expected that this contest, as the previous ones to which reference has already been made, would be finally determined not upon the basis of the accuracy of puzzle solutions, but upon a judging of the letters submitted by tying contestants. I further find, giving consideration not only to the published rules for the contest but to the advertising literature as a whole, that the character of the contest was misrepresented as charged by the Government in its memorandum of charges; and, therefore, that the respondents are engaged in conducting a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations, and promises in violation of the postal fraud statutes.

It is therefore recommended that a fraud order be issued against Puzzle Contest, Facts Magazine; Contest Editor, Facts Magazine; Judith S. Johnson, Contest Editor; Miss J. S. Johnson, Contest Editor; Contest Editor; Facts Magazine; and Henry Walsh Lee, Editor in Chief, Facts Magazine and their officers and agents as such at New York, New York.

(Signed) VINCENT M. MILES, *Solicitor.*

92 In the District Court of the United States

[Title Omitted.]

[File endorsement omitted.]

Affidavit of John J. Gregory

Filed Oct. 16, 1945

DISTRICT OF COLUMBIA, *ss:*

John J. Gregory, being first duly sworn, states:

That I am employed as an attorney in the Office of the Solicitor of the Post Office Department at Washington, D. C.

That I am in charge of a section of that office which, among other duties, passes upon the mailability of matter under the postal lottery statutes.

That there has been brought to my attention an affidavit filed by Henry Walsh Lee in support of a Complaint filed by Read Magazine, Inc., et al., in the District Court for the District of Columbia for temporary restraining order and a preliminary injunction against the enforcement by the Postmaster General of fraud order No. 29273, dated October 1, 1945, which affidavit contains the following allegation as part of paragraph 15: "The announcement and rules of the 'Hall of Fame' contest were presented to Mr.

Gregory of the Office of the Solicitor to the Postmaster General for review. He passed them as mailable."

93 That this statement is absolutely incorrect and the facts of the matter are quite to the contrary.

That on March 10, 1945, before the contest was advertised to the public, Mr. Leonard S. Melrod, an attorney associated with Mr. Alvin Newmyer, of Washington, D. C., called at my office and displayed to me two advertisements of the Facts Magazine puzzle contest.

That Mr. Melrod at that time requested my advice as to the mailability of the advertisements in question, whereupon I informed him that the Solicitor's Office could not undertake to furnish any ruling upon this particular scheme, particularly in view of the fact that the complete details thereof were not before the office for examination. I further explained to Mr. Melrod that this scheme is identical with a number of others which in the past were investigated by post office inspectors and found to be in conflict with the postal lottery statutes.

That Mr. Melrod was further informed by me that in the event the mails were used in the operation of this scheme, it would be necessary for the promoters to accept full responsibility for any violation of law involved.

That neither upon this occasion nor at any other time have I advised anyone that the literature advertising the contest in question is regarded as mailable.

JOHN J. GREGORY.

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 8 day of October 1945.

C. C. WARREN,
Notary Public.

My commission expires Aug. 22, 1950.

94 In the District Court of the United States

[Title omitted.]
[File endorsement omitted.]

Order

Filed Oct. 19, 1945

Plaintiffs' motion for a preliminary injunction having come on before me to be heard and upon consideration of the complaint, the notice of motion, the affidavits in support thereof, the affidavits in opposition thereto, and after hearing argument of counsel for the respective parties, and it having been stipulated by and be-

tween the attorneys for the parties thereto that the defendant would file his motion for summary judgment on October 22, 1945, and due deliberation having been had thereon, and upon the stipulation of the attorneys for the parties made in open court, it is hereby

Ordered that the stay contained in the order of this Court in this action dated October 2, 1945, be and the same hereby is continued to the date of the entry of the order of this Court upon said motion for summary judgment; and it is further

Ordered that pending the order of this Court upon said motion for summary judgment herein plaintiffs and their agents deposit daily beginning October 20, 1945 in the registry of this
95 Court the sum of all monies and the proceeds of all checks and money orders received by them as qualifying fees for participation in a certain contest known as Facts Magazine's Hall of Fame Puzzle Contest now being conducted by plaintiffs and their agents beginning as of 2:30 P. M. October 19, 1945, together with a list of the names and addresses of the persons who remitted such qualifying fees to be retained in said registry pending the further order of this Court; and it is further

Ordered that pending the order of this Court on said motion for summary judgment the defendant by his agent or representative may attend at the office of the plaintiffs and their agents at the time of the opening of the mail hereinafter referred to and examine the contents of all mail received by Puzzle Contest, Facts Magazine; Contest Editor, Facts Magazine; Judith S. Johnson, Contest Editor; Contest Editor; Facts Magazine, and Henry Walsh Lee, Editor in Chief, Facts Magazine.

Dated October 19, 1945 at Washington, D. C.

ALEXANDER HOLTZOFF,
Justice, United States District Court.

The above entitled order is consented to.

CUMMINGS & STANLEY,
Attorneys for Plaintiffs.
DANIEL B. MAHER,
Attorney for Defendant.

96 In the District Court of the United States

[Title omitted.]
[File endorsement omitted.]

Motion of the defendant 1. To dismiss the complaint; or in the alternative for summary judgment

(Filed Oct. 22, 1945)

Comes now the defendant, Robert E. Hannegan, Postmaster General of the United States, and respectfully moves the Court as follows:

1. To dismiss the plaintiff's complaint for failure to state a claim upon which relief may be granted.

2. For summary judgment pursuant to rule 56 (b) of the Federal Rules of Civil Procedure, on the ground that there is no genuine issue as to any material fact and that the defendant is entitled to judgment as a matter of law.

Edward M. Curran.
EDWARD M. CURRAN,
United States Attorney.
By D. M.
Daniel B. Maher.
DANIEL B. MAHER,
Assistant United States Attorney.

97 In the District Court of the United States

[Title omitted.]
[File endorsement omitted.]

Affidavit in support of summary judgment

In support of the motion for summary judgment the defendant incorporates herein the affidavit of Vincent M. Miles filed in opposition to the motion for preliminary injunction together with exhibits A–1 to A–9 which were attached thereto; and the affidavit of John J. Gregory filed in opposition to the motion for preliminary injunction, and the transcript of proceedings before the Postmaster General which was offered in evidence by the plaintiff at the hearing of the motion for preliminary injunction; and the Government's exhibits 1 to 12 which were received in evidence at the hearing on the fraud order and are attached hereto and hereby made a part hereof.

Daniel B. Maher,
DANIEL B. MAHER,
Assistant United States Attorney.

98 In the District Court of the United States

[Title omitted.]
[File endorsement omitted.]

Motion for summary judgment

Filed Oct. 26, 1945

Plaintiffs move the Court as follows:

That it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in plaintiffs' favor for the relief demanded in the complaint on the ground that there is no genuine issue as to any material fact and that plaintiffs are entitled to a judgment as a matter of law.

This motion is based upon (a) pleadings on file in this action; (b) the affidavit of Henry Walsh Lee, sworn to October 2, 1945, heretofore filed in this action; (c) the transcript of the proceedings had before the Assistant Solicitor of the Post Office Department on September 4 and 5, 1945, heretofore marked "Exhibit 1" in this action; (d) the exhibits received in evidence and marked for identification in said proceeding before the Assistant
99 Solicitor of the Post Office Department; (e) the affidavit of Leonard S. Melrod, sworn to October 19, 1945.

Dated, Washington, D. C., October 24, 1945.

Yours, etc.

CUMMINGS & STANLEY,
By WILLIAM STANLEY,
A Member of the Firm,
Attorneys for Plaintiffs,
1616 K Street NW., Washington, D. C.

To: Honorable EDWARD S. CURRAN,
United States Attorney,
Attorney for Defendant.
Honorable TOM CLARK,
Attorney General of the United States.

100 In the District Court of the United States

[Title omitted.]
[File endorsement omitted.]

Affidavit of Leonard S. Melrod

Filed Oct. 26, 1945

DISTRICT OF COLUMBIA, *ss*:

I, Leonard S. Melrod, being first duly sworn on oath according to law, depose and say:

That I am an attorney at law, engaged in practice in the District of Columbia in association with the law firm of Newmyer and Press, with offices in the Rust Building, Washington, D. C.; that on March 10, 1945, at the request of an official of Publishers Service, Inc., a corporation, of New York, New York, I presented to Mr. John J. Gregory, an attorney in the Office of the Solicitor of the Post Office Department, Washington, D. C., a copy of the proof of an advertisement announcing a puzzle contest which was to be sponsored by "Facts" magazine and was scheduled for publication in the Altoona Tribune, Altoona, Pennsylvania, and other newspapers, and I also presented to him a copy of the April 1945 issue of "Facts" magazine, which contained the official rules of the puzzle contest. The actual copy of the proof presented and the said issue of "Facts" are both attached hereto.

I stated to Mr. Gregory that my office was requested to submit the proof and the magazine to the Solicitor, as noted in red pencil on the proof attached hereto, because "Facts" desired to
101 know whether the ad and the official rules of the contest, or either of them, violated the Postal Regulations and would for that reason not be mailable. After reading the official rules and examining the advertisement, Mr. Gregory stated that, based on his preliminary review, he could see nothing that would constitute a violation of the Regulations which would render the material not mailable. However, Mr. Gregory did state that since the entire puzzle contest was not before him, he could not give a firm opinion on the contest; that it was not the policy of his office to give advance opinions upon the legality of such contests; and, accordingly, he did not express any firm opinion as to whether the contest did or did not involve a violation of the statute relating to lottery. He did state that if, after the contest was started, it was found that the contest did violate the statute, then the promoters would have to acept the responsibility for any violation of law involved. Mr. Gregory did not state to me that the puzzle

contest submitted was identical with earlier contests which were found to be in conflict with the statute.

"After my conference with Mr. Gregory, I promptly reported the foregoing to Publishers Service, Inc.

LEONARD S. MELROD.

Subscribed and sworn to before me this 19th day of October 1945.

MARGARET MCPHERSON,
Notary Public, D. C.

102 District Court of the United States for the District of Columbia

Civil Action No. 30926

READ MAGAZINE, INC., ET AL., PLAINTIFFS
v.
ROBERT E. HANNEGAN, ETC., DEFENDANT

Opinion

Filed Nov. 15, 1945

Motions for summary judgment.

James W. Burke, Jr., Esq., and Lamar Hardy, Esq., of New York; and Homer Cummings, Esq., and William Stanley, Esq., of Washington, D. C., for the plaintiffs.

Edward M. Curran, Esq., United States Attorney, and Daniel B. Maher, Esq., Assistant United States Attorney, of Washington, D. C., for the defendant.

This is an action against the Postmaster General for an injunction restraining the enforcement of a so-called "fraud order" issued by him against "Facts" Magazine and certain of its editors. The matter came on to be heard on the plaintiffs' motion for a preliminary injunction. At the conclusion of the hearing, the court indicated that it would advance the action for an immediate trial on the merits and that in the meantime the temporary restraining order, previously issued by another justice of this court, would be continued, subject to certain limitations needed to safeguard the rights of the Government. Counsel for the Government thereupon stated that since all of the pertinent facts were pre-
103 sented in the papers before the court and were not in dispute, he was willing to submit the case for a determination on the merits forthwith and to that end would file a motion for a summary judgment. Counsel for the plaintiffs acquiesced in this suggestion. Accordingly, both parties filed motions for summary

judgment. The case will be disposed of on these motions. This procedure is appropriate in a case in which the evidentiary facts are not substantially in dispute, and the conflict arises only concerning the ultimate conclusions to be drawn from uncontroverted facts. *Fox* v. *Johnson and Wimsatt*, 75 U. S. App. D. C. 211, 218–219; *Otis Co.* v. *Pennsylvania Ry. Co.*, 61 F. Supp. 905.

The plaintiff, Read Magazine, Inc., is the publisher of a magazine known as "Facts." In April 1945, the magazine published an advertisement inviting the public to participate in a puzzle contest. The Postmaster General ruled that the contest was a fraudulent scheme and on October 1, 1945, acting under Sections 3929 and 4041 of the Revised Statutes (U. S. Code, Title 39, Secs. 259 and 732),[1] issued a "fraud order" against the magazine and, certain of its editors. The order forbid the Postmaster at New
104 York to pay any postal money order drawn to the order of Puzzle Contest, Facts Magazine; Contest Editor, Facts Magazine; Judith S. Johnson, Contest Editor; Miss J. S. Johnson, Contest Editor; Contest Editor; Facts Magazine; and Henry Walsh Lee, Editor in Chief, Facts Magazine; and instructed him to return to the Postmasters at the offices at which they were originally mailed all letters and other mail matter directed to any of the above-mentioned persons or concerns. The mail matter thus returned was to be delivered to the senders thereof with the following words written or stamped on the outside: "Fraudulent: Mail to this address returned by order of Postmaster General." The order further provided that if there was nothing to identify the senders the mail matter should be sent to the dead-letter branch. This action to enjoin the enforcement of the fraud order was brought by the publishers and editors of the magazine and corporations affiliated with the publishers.

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[1] The pertinent portion of U. S. Code, Title 39, Section 259, reads as follows:
"The Postmaster General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme or device or obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, instruct postmasters at any post office at which registered letters or any other letters or mail matter arrive directed to any such person or company, or to the agent or representative of any such person or company, whether such agent or representative is acting as an individual or as a firm, bank, corporation, or association of any kind, to return all such mail matter to the postmaster at the office at which it was originally mailed, with the word 'Fraudulent' plainly written or stamped upon the outside thereof; and all such mail matter so returned to such postmasters shall be by them returned to the writers thereof, under such regulations as the Postmaster General may prescribe." • • •
The pertinent portion of U. S. Code, Title 39, Section 732, reads as follows:
"The Postmaster General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, forbid the payment by any postmaster to said person or company of any postal money orders drawn to his or its order, or in his or its favor, or to the agent of any such person or company, whether such agent is acting as an individual or as a firm, bank, corporation, or association of any kind, and may provide by regulation for the return to the remitters of the sums named in such money orders."

105 The advertisement of the puzzle contest comprised a detailed set of rules. In brief, the contest was to be conducted in the following manner. A group of 80 puzzles, divided into 20 series of four puzzles each, was to be offered for solution. Each entrant was required to pay the sum of fifteen cents on submitting the solutions for each series. In other words, each entrant had to pay in the aggregate the sum of $3 as a fee for his participation in the contest. In case of a tie, an additional group of 80 puzzles was to be solved by the contestants who had not been eliminated. Again, the second group of puzzles was to be divided into 20 series of four puzzles each, and the sum of fifteen cents had to accompany the solution of each series, or in the aggregate a further sum of $3. If there was a tie at the second stage, the same process was to be repeated, with a further sum aggregating $3 to be paid by each contestant. At this third and final stage, however, each competitor would be required to submit, in addition to his solution of the puzzles, a letter on the subject "The Puzzle I Found Most Interesting and Educational in this Contest." If a tie still persisted, the prizes were to be
106 awarded on the basis of the merits of the letters. There were to be 500 cash prizes, aggregating the sum of $17,500. The first prize was to be the sum of $10,000. The purpose of the contest was to advertise a series of books published by the plaintiff, Literary Classics, Inc. At each stage of the contest, each successful competitor was to receive a book published by this plaintiff, said to be worth $3. In each instance the book was a reprint of a well known classic.

The Act under which the Post Office Department acted is a beneficent measure intended to protect the public against fraudulent stratagems and artifices. Its efficacy is found in the fact that it can be used to suppress such schemes summarily and expeditiously, by barring the guilty party from the use of the mails. The history of the administration of the statute indicates that it has been instrumental in protecting the public from imposition by rogues and swindlers. The effectiveness of the statute, however, is due to its exceedingly drastic character, resulting from both the nature of the remedy and the summary manner in which it can be invoked by administrative action.

It seems reasonable to assume that the law was originally directed against schemes that were palpably dishonest and concerns that were obviously fraudulent. To deny to such a person the use of postal facilities is just retribution. A different problem arises, however, when it is attempted to apply this drastic remedy to a border-line case, or to a legitimate concern which is engaged in a business that is admittedly lawful, with the exception of one of many activities. The effect of a fraud order is to stop all mail

directed to the person or concern named in it. It necessarily
107 comprehends both mail relating to legitimate business as well as that affecting the fraudulent activities. It even applies to purely personal and social correspondence, including that from members of one's family. It deprives the person affected by the order of the right of access to the principal channel of communication with other members of society. In effect he becomes an outcast or outlaw, and is completely isolated, so far as concerns ordinary and usual means of communication. Such an order results in ignominy and humiliation. Its consequences may be disastrous and even catastrophic.

In *Pike* v. *Walker* (U. S. Ct. App. D. C.) 73 App. D. C. 289, 291, Groner, J., pointedly remarked:

"Whatever may have been the voluntary nature of the postal system in the period of its establishment, it is now the main artery through which the business, social, and personal affairs of the people are conducted and upon which depends in a greater degree than upon any other activity of government the promotion of the general welfare. Not only this, but the postal system is a monopoly which the government enforces through penal statutes forbidding the carrying of letters by other means."

Recently the same court observed that modern mail service "is a highway over which all business must travel," *Esquire* v. *Walker* (U. S. Ct. App. D. C.) 151 F. (2d) 49, 51.

A serious question of statutory construction may perhaps be lurking in this case, namely, whether it was the intent of the Congress that this statute should be applicable against a concern or a person pursuing some activities that are admittedly honest and lawful, in addition to the scheme branded as dishonest, or whether it was intended to be limited to persons and concerns who
108 engage solely in fraudulent activities. If the former construction is to be adopted, the result is to cut off a person from receiving any proper mail, or from having any lawful means of communication in respect to his legitimate activities, if he is found guilty of engaging in some other endeavor which is deemed to be fraudulent. This outcome would be a modern form of outlawry, which seems contrary to our fundamental ideals of justice.

The Supreme Court stated in *United States* v. *Kirby*, 7 Wall. 482, 486–487:

"All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter."

See also *Church of the Holy Trinity* v. *United States*, 143 U. S. 457; *United States* v. *American Bell Telephone Co.*, 159 U. S. 548, 549; *Sorrells* v. *United States*, 287 U. S. 435, 446. It is not necessary, however, in the light of the conclusion about to be reached to determine this question of statutory construction.

Assuming that the case is within the statute, it becomes necessary to define the scope and extent of judicial review of a "fraud order" isued by the Postmaster General. The duty of administering the law devolves on him. The discretion is vested in him. The determination of the fact whether a fraudulent scheme is being conducted must be made by him "upon evidence satisfactory to him." The court may not substitute its own judgment for that of the Postmaster General. Neither may it review the
109 weight of evidence and set aside his action merely because the court might have arrived at a different result on the same evidence. If, however, the court reaches the conclusion that there is no substantial evidence to sustain the administrative determination, or if it finds that the administrative action was arbitrary or capricious, or lacking in due process of law from a procedural standpoint, the court may enjoin the enforcement of the order.

These principles are fully sustained by the authorities. The Supreme Court in the leading case of *School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94, 110, formulated the governing principles as follows:

"In such a case, as the one before us, there is no adequate remedy at law, the injunction to prohibit the further withholding of the mail from complainants being the only remedy at all adequate to the full relief to which the complainants are entitled. Although the Postmaster General had jurisdiction over the subject-matter (assuming the validity of the acts) and therefore it was his duty upon complaint being made to decide the question of law whether the case stated was within the statute, yet such decision being a legal error does not bind the courts."

In that case the court held that an order withholding mail from a concern teaching mental healing had been erroneously issued and that its enforcement should be enjoined.

In *Aycock* v. *O'Brien*, 28 F. (2d) 817, the Circuit Court of Appeals for the Ninth Circuit thus summarized the applicable rules of law:

"While within a limited range courts of equity will grant relief against orders of this character, it is well settled that they will not interfere where there has been no mistake of law, a fair hearing has been accorded, and the findings of the administrative officers

upon issues of fact are supported by substantial evidence."
110 The Circuit Court of Appeals for the Sixth Circuit in *Jarvis* v. *Shackelton Inhaler Co.*, 136 F. (2d) 116, 119 enunciated the same doctrine as follows:

"The power of a court of equity to review the order is limited. It extends no further than to determine whether there is substantial evidence in fact, as distinguished from opinion, to support the order. If there is, the case is foreclosed against appellee. If there is not, it follows that appellee has suffered irreparable injury to its property rights."

In that case an injunction was granted restraining the enforcement of a fraud order against a concern engaged in manufacturing and marketing an inhaling compound for the relief of colds and similar ailments.

On the basis of the authorities, the only question for this court to review in the instant case is whether there was any substantial evidence to sustain the administrative determination that the publishers and editors of Facts Magazine were conducting or operating a scheme or device for obtaining money through the mails by means of fraud, or false pretense, representations or promises. As the facts are not in dispute, the answer to the question depends upon an examination of the advertisement and other literature emanating from the editors of the magazine.

The Postmaster General found three objections to this material. The first objection was that the contest was denominated a "puzzle contest" in large type, while a reading of all of the Rules of the contest printed in small type disclosed that if a number of contestants were tied after two stages of elimination, it would be necessary for the remaining competitors to submit letters in addition to solving puzzles. The Post Office Department
111 took the position that this feature of the contest changed its nature from that of a puzzle contest to what might presumably be called a letter-writing contest and that, therefore, to denominate it a puzzle contest was a misnomer amounting to a fraud. This dispute seems, however, to be solely over nomenclature. The nature of the contest could be ascertained from reading the entire advertisement.

The second objection was that it did not clearly appear from the advertising matter that a contestant might be obliged to remit an aggregate amount of $9 in order to remain in the contest to its final stage. It was merely stated in the announcement that the sum of 15 cents had to accompany the solution of each set of puzzles. The sum total of $9 could be easily reached, however, by a multiplication of the figures appearing in the advertisement.

The third objection was that it was represented to the public

that the contestant might become a prize winner merely by submitting correct solutions to the first group of 80 puzzles. The official rules of the contest, however, printed in small type in the body of the advertisement contained an express statement that a large number of entrants was expected and that ties between successful competitors were likely.

Indeed, the advertisement is by no means a model of clarity and lucidity. It is diffuse and prolix, and at times somewhat obscure. Many of its salient provisions are printed in rather small type. An intensive and concentrated reading of the entire text is indispensable in order to arrive at an understanding of the entire scheme. Nevertheless, a close analysis of this ma-
112 terial discloses the complete plan. Nothing is omitted, concealed or misrepresented. There is no deception. The well-founded criticisms of the plaintiff's literature are a far cry from justifying a conclusion that the announcement was a fraud on the public. Similar animadversions may be directed against the typical insurance policy, bill of lading, or express receipt. Some of the vital terms of most of these documents are generally printed in small type and couched in phraseology that is difficult for the average holder of the instrument to comprehend. These considerations, however, do not justify an inference of fraud. Under no circumstances, therefore, can the puzzle contest and its descriptive literature be considered a fraudulent device or strategem for obtaining money. The conclusion is inevitable that there is no evidence to support the finding of fact on which the fraud order is based and that, therefore, the plaintiff is entitled to a permanent injunction against the enforcement of the order.

As in this case this Court sits as a court of equity, it is not amiss to consider and weigh the equities involved. The undisputed facts are that over 189,000 persons entered the contest at its inception. Approximately 35,000 persons were left after the unsuccessful competitors were eliminated at the first stage. Eight thousand more were eliminated at the second stage, and 27,000 entrants still remain at the third and final stage of the contest. Eventually a considerable number of them would become entitled to receive valuable cash prizes, if the contest is carried to a conclusion. Each of these person has already paid entrance fees aggregating at least $6 and has spent considerable time and effort, which
113 may have been arduous, in solving 160 puzzles. To foreclose the plaintiffs by administrative fiat from carrying the contest to a final termination would seem unfair and inequitable to these 27,000 members of the public, who still remain in the contest and who have invested time, effort, and money.

If we consider the matter from the standpoint of the plaintiffs, we find that although they have received over $760,000 in entrance fees, they have expended or have become obligated to expend, a sum aggregating in excess of $935,000. This total comprises the aggregate cash value of the prizes, amounting to $105,000, the cost of the books that have been distributed, as well as other items of expense in conducting the contest, such as the printing, advertising, postage and other overhead disbursements. Every competitor who has submitted solutions of all the puzzles at either the first or second stage of the contest has received a book, which is a reprint of a well-known classic. Many have received two books. It is quite apparent that the magazine initiated the contest not as a profit-making scheme, but for the purpose of advertising its many publications. In the light of all of these facts and especially because the fraud order did not become effective until after the second stage of the contest had been concluded, it seems inequitable to prevent the contest from proceeding to a final termination.

The plaintiffs' motion for summary judgment is granted. The defendant's motion for summary judgment is denied. Judgment for plaintiffs granting permanent injunction.

ALEXANDER HOLTZOFF,
Associate Justice.

NOVEMBER 15, 1945.

114 In the District Court of the United States

[Title omitted.]
[File endorsement omitted.]

Order continuing impounding order

Filed Nov. 27, 1945

An order having been made and filed in this action on October 19, 1945, by consent of the parties, directing plaintiffs and their agents to deposit in the Registry of this Court the sum of all moneys and the proceeds of all checks and money orders received by them as qualifying fees for participation in a certain contest known as Facts Magazine Hall of Fame Puzzle Contest then being conducted by plaintiffs and their agents, pending the order of this Court upon motions for summary judgment made by the respective parties, and said motion for summary judgment made by the plaintiffs having been granted, it is hereby

115 Ordered that the order of this Court in this action dated October 19, 1945 be and the same hereby is continued in

effect pending appeal of this cause, or until final disposition of any appeal taken.

November 27, 1945.

ALEXANDER HOLTZOFF, *Justice.*

116 In the District Court of the United States
for the District of Columbia

Civil Action No. 30,926

READ MAGAZINE, INC., LITERARY CLASSICS, INC., AND PUBLISHERS SERVICE COMPANY, INC., HENRY WALSH LEE AND JUDITH S. JOHNSON, 75 WEST STREET, NEW YORK, N. Y., PLAINTIFFS

v.

ROBERT E. HANNEGAN, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, PENNSYLVANIA AVENUE, BETWEEN 12TH AND 13TH STREETS, NW., WASHINGTON, D. C., DEFENDANT

Judgment granting permanent injunction

Filed Nov. 27, 1945

The plaintiffs having filed their complaint praying for a permanent injunction against the enforcement of a fraud order issued by defendant in a proceeding before him entitled "In the Matter of Charges That Puzzle Contest, Facts Magazine; Contest Editor, Facts Magazine; Judith S. Johnson, Contest Editor; Miss J. S. Johnson, Contest Editor; Contest Editor; Facts Magazine; and Henry Walsh Lee, Editor in Chief, Facts Magazine, at New York, New York, are engaged in conducting a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises, in violation of 39 U. S. Code 259 and 732 (Sections 3929 and 4041 of the Revised Statutes, as amended)," and defendant having filed his answer thereto
117 and having made a motion for summary judgment, and plaintiffs having made a cross-motion for summary judgment, and the Court having heard oral argument and having found no genuine issue as to any material fact and no controversial issue of facts to be submitted to the trial court, and having concluded that plaintiffs are entitled to judgment as a matter of law; it is hereby

Ordered, adjudged, and decreed that defendant's motion for summary judgment be and the same hereby is denied, and that plaintiffs' motion for summary judgment be and the same hereby is granted; and it is further

Ordered, adjudged, and decreed that a permanent injunction be and the same hereby is granted enjoining defendant, his agents, servants and employees from (a) directly or indirectly doing or attempting to do any act or thing in pursuance of said fraud order, or enforcing or attempting to enforce said fraud order and (b) in any way interfering with the normal conductor of plaintiffs' business as a consequence of the issuance of said fraud order.

Dated: November 27, 1945.

ALEXANDER HOLTZOFF, *Justice.*

125 In United States Court of Appeals
District of Columbia

The Court met pursuant to adjournment. Present: Honorable D. LAWRENCE GRONER, Chief Justice, HAROLD M. STEPHENS, HENRY W. EDGERTON, BENNETT CHAMP CLARK, WILBUR K. MILLER AND E. BARRETT PRETTYMAN, Associate Justices.

Before Honorable HENRY W. EDGERTON, WILBUR K. MILLER and E. BARRETT PRETTYMAN, Associate Justices

* * * * *

No. 9268. October Term, 1946

ROBERT E. HANNEGAN, INDIVIDUALLY AND AS POSTMASTER GENERAL, ETC., APPELLANT

vs.

READ MAGAZINE, INC., ET AL., APPELLEES.

Minute entry

Oct. 17, 1946

On motion of Mr. Burdette M. Asbill, Mr. John W. Burke, Jr., of the Bar of the Court of Appeals of the State of New York was permitted to argue for appellees pro hac vice by special leave of Court.

Argument commenced by Mr. J. Francis Hayden, attorney for appellant, and concluded by Mr. John W. Burke, Jr., attorney for appellees.

* * * * *

126 United States Court of Appeals, District of Columbia

No. 9268

ROBERT E. HANNEGAN, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, APPELLANT

v.

READ MAGAZINE, INC., ET AL., APPELLEES

Appeal from the District Court of the United States for the District of Columbia

Argued October 17, 1946—Decided December 9, 1946

Mr. J. Francis Hayden, Special Assistant to the Attorney General with whom Mr. Edward M. Curran, United States Attorney at the time the brief was filed, and Mr. Sidney S. Sachs, Assistant United States Attorney, were on the brief, for appellant.

Mr. John W. Burke, Jr., of the Bar of the State of New York, prohac vice, by special leave of Court, with whom Mr. Burdette M. Asbill was on the brief, for appellees.

Before EDGERTON, WILBUR K. MILLER, and PRETTYMAN, J. J.

Opinion

PRETTYMAN, J.: Appellant, as Postmaster General, issued an order forbidding the use of the mails to appellees. They brought a civil action in the District Court to enjoin enforcement of the order. That court granted their motion for summary judgment and granted a permanent injunction. This appeal followed.

Appellees publish two magazines and also publish books in the form of reprints of classical literature. In one of these magazines, they conducted a contest, called a puzzle contest, for large cash prizes. A group of eighty puzzles, divided into twenty series of four each, was initially offered for solution. The contest was promoted by national newspaper advertising, by extensive ad-

127 vertising in appellees' Facts Magazine, and by a booklet sent in response to coupons clipped from the advertisements. The "Official Rules of the Contest" were printed in full text in the newspaper and magazine advertisements and in the booklet. They contained the following:

"In case of ties, if two or more persons tie in submitting the correct solutions, then the first two or more prizes will be reserved for those contestants, and will be awarded in the order of accuracy of

the submissions of those contestants to a first, and if necessary, a second tie-breaking group of puzzles, divided into Series exactly like the first Group. In case a second tie-breaking Group of puzzles is necessary, contestants eligible to solve same will be required to accompany their solutions to this second tie-breaking Group of puzzles with a letter of not more than 200 words on the subject: 'The Puzzle I Found Most Interesting and Educational in This Contest.' All tie-breaking Series must be qualified in accordance with the provisions of Rule No. 8. Only in case ties exist after such final tie-breaking puzzles have been checked will the letters be considered, and in that event they will be judged on the basis of originality in description and general interest. In case of final ties, duplicate prizes will be awarded. Upon entering the contest, the entrant is asked to realize that the sponsor anticipates that a large number of persons may enter the contest and that a large number may solve one, two or all three of the Groups of puzzles, and that the sponsors will not make known the number of persons competing in any phase of the contest, irrespective of how large or how small that number may be. FACTS Magazine reserves the right to offer contestants the opportunity to win increased prizes, or to offer consolation prizes or additional prizes at any time prior to the conclusion of the contest."

These Official Rules were printed in the same type and with equal prominence with the remainder of the text of the advertisements, except for the headlines. They were likewise printed in full in the booklet of puzzles sent to each entrant. Contestants were told, both in the advertisements and in the booklet, to read the Rules—"The Rules are printed in full below. Please read them carefully and be sure you understand them." The Rules were repeatedly referred to in the advertisements and in the booklet. The entry blank itself recited that the entrant wished to qualify "in accordance with the official rules." The headlines at the top of the advertisements, in large headline type, were "$10,000 First Prize—Puzzle Contest" and variations of the same terminology. The headlines and the text emphasized the puzzle feature of the contest. The contestants were told that they must enclose 10 cents with each series of four solutions, and that in return for the remittances for the twenty series, each contestant would receive a book issued by the appellee book company. Such books were duly sent each contestant as promised.

Contestants who solved the first group of eighty puzzles were sent a letter in which they were told that by buying additional books they could make themselves eligible for increased prizes.

The letters were quite emphatic in stating that eligibility
128 for the original prizes remained whether or not the contestants wished to qualify for eligibility for the increased prizes.

At the time of the hearing in the Post Office Department, $760,000 in fees had been received, and appellees had expended, or become obligated to expend, $935,000, including prizes, books distributed, printing, advertising, etc. The completion of the contest was interrupted by the Post Office action.

Appellant says that appellees knew at the outset that the winners of the contest would be finally determined not upon the accuracy of puzzle solutions, but upon a judging of the letters submitted by the tieing contestants. He also puts much stress upon the communications sent to all contestants who successfully solved the first series of puzzles. He says that the scheme was cleverly designed and intended to create the impression (1) that eighty puzzles comprised the contest, (2) that the contest, though simple in nature, would be decided on the strength of the puzzles and without recourse to letter-writing, and (3) that it would cost not more than three dollars to become eligible for a prize.

Appellant does not claim that any statement in the advertisements was untrue or that there was any departure from the procedure announced in the Official Rules of the Contest. There is no claim by him that the judging of the letters was to be other than bona fide, or that any contestant failed to receive the promised books. No contestant, so far as the record shows, complained of being misled or defrauded. In other words, the fraud order is not premised upon specific or affirmative misstatements, or upon failure to perform as promised, but is premised upon an impression which appellant says is conveyed by the advertisements as a whole. He derives the impression from the headlines in the advertisements and the comparative urgency which he finds in some of the expressions in them.

The statutory clause under which appellant acted, authorizes him to forbid the use of the mails to any person or company conducting any "scheme or device for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises." [1]

Findings of the Postmaster General in cases of this sort will not be disturbed by the court where they are fairly arrived at and have substantial evidence to support them.[2] Furthermore, "even if an advertisement is so worded as not to make an express misrepresentation, nevertheless, if it is artfully designed to mis-
129 lead those responding to it, the mail fraud statutes are applicable." [3] It is upon the latter rule that appellant relies in the case at bar.

[1] R. S., § 3929, 39 U. S. C. A., § 259.
[2] Farley v. Simmons, 69 App. D. C. 110, 114, 99 F. 2d 343, 347 (1938), and cases there cited.
[3] *Id.* at 113, 99 F. 2d at 346.

The rule is broad; a false pretense, representation, or promise may be made by impression. But such impression must be fairly derived. As we said in Farley v. Simmons,[4] the question is what the advertisement is "reasonably intended to cause the reader thereof to believe."

To support appellant's conclusion in this case, one must ascribe to the advertisements an impression directly contrary to the stated rules of the contest. One must thus assume that readers were led not to read the Rules, or were led to ignore them or to misunderstand them or to believe something else contrary to their statement. There is no evidence, we think, to support any of those assumptions. The Rules were legibly printed. They were emphasized, rather than minimized, in the text. They were clear to any reasonable mind. No contradictory expressions occurred elsewhere.

That this contest was an advertising device designed to promote the book-publishing business of appellees must have been plain to the most casual reader. The advertisements specifically told him, "This contest with Facts Magazine as sponsor, is being presented as a means of popularizing the Literary Classics Book Club." Moreover, the puzzles presented were so simple that patience and time were obviously the only requirements for the successful solution of the whole series. It is impossible to believe that any prospective contestant could think that only one person would be successful in the solutions. He was told in the Rules that the sponsors anticipated that a "large number" of persons would solve all the puzzles, and his own impressions must have told him the same thing.

We fail to see that the letters which were written to the contestants who successfully solved the first series of puzzles, cast any complexion upon the venture different from that cast by the original advertisements themselves.

We are told that the Postmaster General must be sustained if his action is within "the most malign interpretation which can in reason be put on" the advertisements, the quoted words being from an opinion of Judge Learned Hand while on the District Court in 1909.[5] But that broad expression is limited by "in reason," and the judge's further description of the Postmaster General's power was circumscribed by the words "reasonably conclude."[6] We think that it must necessarily be contemplated that any
130 reasonable person proposing to enter a contest would read the rules if he were cautioned to do so, and would under-

[4] 69 App. D. C. at 114, 99 F. 2d at 347.
[5] Putnam v. Morgan, 172 Fed. 450.
[6] See our discussion of the same quotation in Farley v. Simmons, 69 App. D. C. 110, 114, 99 F. 2d 343, 347 (1938).

stand plain terms in them. To be within reason even the most malign impression must proceed from that minimum premise. If the Postmaster General's power were coextensive with the most malign impression to which advertisements might be susceptible, contrary to unambiguous terms plainly stated, he would be the unrestricted master of much of the country's business. We do not find that power in the simple and explicit language of the statute, which is limited to false or fraudulent pretenses, representations, or promises. Advertisements which are clearly not false or fraudulent frequently have a certain extravagance and urgency in their appeals, which to the most malign, and even to the mildly cynical, are beyond the boundary of precise accuracy. If a general impression contrary to terms plainly stated is to be the basis for a fraud order, it must, we think, be the impression reasonably conveyed to the public to which the advertisement is addressed. The impression which is the criterion is that of a reasonable reader, not the most malign impression uninhibited by reason. We so held in Farley v. Simmons.[1]

We think that the advertisements before us fairly urged contestants to read the Rules and that the Rules stated fairly, in style of type, placement, and terms, what was proposed. That being so, and there being no ambiguity in or departure from the proposals stated, a finding of false pretenses, representations, or promises could not properly be made. Legally speaking, that conclusion upon these facts was arbitrary and capricious.

We think that the District Court was correct in its judgment.

Affirmed.

Dissenting opinion

EDGERTON, J., dissenting: The falsity of appellees' advertising seems to me as clear as its truth seems to the majority of the court. The question before the court is not whether my view is right but whether it is reasonable.

Any language or conduct that is intended to convey a false impression is a false pretense. No special form is necessary. I think appellees, in several advertisements, made false pretenses concerning the nature of the contest, its extent and duration, and its cost to contestants. I shall discuss only one advertisement and only one sort of pretense.

The puzzles were simple. Appellees knew from experience with similar contests that thousands of contestants would solve all the puzzles correctly; that it was impossible to win a prize merely by solving puzzles; and that prize winners would be chosen from

[1] 69 App. D. C. 110, 99 F. 2d 343 (1938).

131 among thousands of persons on the basis of a letter-writing contest. So much is plain and undisputed.[8]

It follows that if appellees intended to convey to all or any of their readers either (1) the idea that the contest was merely a puzzle contest or (2) the idea that there was a substantial chance that prizes would be won merely by solving puzzles, appellees made a false pretense. The fraud order must be sustained if the Postmaster General could reasonably find either of those intents. Either is plainly material, since a person who is willing to risk his money in a puzzle contest may be unwilling to risk it in a letter-writing contest and a person who is willing to face a possibility that puzzles may not be decisive may be unwilling to face a certainty that they will not be decisive.

Exhibit 1 is a full-page tabloid-size advertisement which appellees published in Newsday on April 3, 1945. Across the top of the page is printed in large black letters "Solve the 4 Puzzles Now—Mail Entry By Saturday Night, April 7th," and then "$10,000 First Prize—Puzzle Contest." The words "Puzzle Contest" are in letters nearly an inch high. Next comes, in type much smaller than these headlines but much larger and heavier than the body of the advertisement: "Win $10,000, $2,000, $1,000 or Any of 500 Cash Prizes in Facts Magazine's New, Delightful Puzzle Contest. Solve These 4 Puzzles Now! Write your solutions on the Entry Form below, and mail the Entry Form on or before Midnight, Saturday, April 7th!" Next follows a "Sample Puzzle—Just to Give You the Idea," and then: "Facts Magazine Invites You To Enter This Puzzle Contest. Accept this cordial invitation from Facts Magazine to enter its puzzle contest. Here is your opportunity to win $10,000, $2,000, $1,000 or any of 500 cash prizes totaling $17,500." These invitations, and not merely the headlines which precede them, are in larger and heavier type than the body of the advertisement.

The right-hand column of the advertisement is largely occupied by the "sample puzzle" and by four other pictured puzzles. These puzzles consist largely of crude drawings. Like most drawings they catch the eye.

An "Official Entry Form" is a conspicuous part of the advertisement. It calls the contest a "Puzzle Contest" and states that "the additional puzzles" will be sent on receipt of the form. It refers to "the official rules" but it does not refer to the writing of letters.

[8] Approximately 35,000 persons solved correctly the original group of 80 puzzles, and approximately 27,000 of these solved correctly all the puzzles in the first "tie-breaking" series. The Post Office proceedings prevented completion of a second tie-breaking series.

So far there is no suggestion in the advertisement that the contest will, or may, involve the writing of letters. So far there
132 is no qualification of the repeated and emphasized assertion that it is a puzzle contest. Obviously the conspicuous parts of the advertisement convey, and are intended to convey, the idea that it is merely a puzzle contest.

The court's theory seems to be that appellees intended to correct, in the course of the advertisement, the false idea that they intended its conspicuous parts to convey. It seems to me clear that they intended not merely that all readers should get that false idea, but also that many readers should retain it, and that all readers should retain, at the very least, the false idea that there was a substantial chance that prizes would be won merely by solving puzzles. This inference is, at least, one that the Postmaster General might reasonably draw. This is true because (1) the advertisement does not emphasize, but on the contrary diverts attention from, any language which mentions the writing of letters, and (2) even that language does not say that winners are, but clearly intimates that they are not, *certain* to be chosen on the basis of a letter-writing contest. Either of these facts alone is sufficient to support the Postmaster General's inference of fraud and therefore the fraud order. Both together are doubly sufficient.

(1) The words "The Rules are printed in full below. Please read them carefully and be sure you understand them" are in fine print, twelve lines to an inch, near the middle of the page. Attention is diverted from these words by their being printed at the end, not the beginning, of the paragraph in which they occur. The earlier and longer part of the paragraph deals with puzzles alone. This context conveys, not too subtly, the suggestion that the Rules likewise deal with puzzles alone.

The writing of letters is nowhere mentioned in type that is large or heavy or prominently placed. It is mentioned only in the Rules. The Rules are in fine print, twelve lines to an inch, in the lower left-hand corner of the page. They contain almost a thousand words divided into ten numbered paragraphs. The quotation on which the court relies, beginning with the words "In case of ties * * *" and ending with the words "* * * the conclusion of the contest," is a part of paragraph 9 of the Rules. That paragraph is the longest of the ten and therefore the least likely to be read in its entirety. It does not begin with the language which the court quotes. It begins with these words: "Neatness will not count. Do not decorate your answers. Just submit your solutions in accordance with the rules." Nothing could be better calculated to suggest to a prospective contestant (a) that the remainder of the paragraph, like its opening sen-

tences, is unimportant and need not be read, and (b) that the remainder of the paragraph, like its opening sentences, deals only with "answers" and "solutions." Then follows, beginning
133 in the middle of a line of fine print, with nothing to emphasize it or draw the reader's attention to it, the language which the court quotes and on which the court relies. It would have been easy for appellees to print this language in large type, or in heavy type, or to begin a paragraph with it, or to devote an entire paragraph to it, or to do several of those things. From any point of view but one and for any purpose but one, the importance of this language clearly demanded that attention be called to it in some way, since it was the only language in the entire advertisement which tended to qualify the numerous and conspicuous assertion of the headlines, the large type, the pictures, and the entry form that the contest was a puzzle contest. Instead of emphasizing this vital language, appellees did the opposite. They hid it as effectively as they could. In setting it in fine print, near the bottom of the page, in a paragraph introduced by matter both unrelated and unimportant, what can have been their purpose, except to prevent as many prospective contestants as possible from finding out that the contest might involve letter writing? No answer has been suggested. Unless the Postmaster General acted capriciously in drawing the only inference that has been suggested as possible, his fraud order must be sustained.

(2) If a prospective contestant discovered the language on which the court relies, and carefully read every word of it, he would learn that the "puzzle contest" was likely to end in a letter-writing contest for which a large number of persons might be eligible. But he would not learn that thousands of persons were certain to be eligible, or even that any letter-writing contest at all was certain to be required. Nothing of that sort is stated anywhere, not even by the hidden language on which the court relies. On the contrary, that very language intimates, clearly and repeatedly, that ties in the solving of puzzles may or may not occur and that although the prizes may not, on the other hand they may, be won by the solving of puzzles alone: "*In case* of ties, *if* two or more persons tie in submitting the correct solutions"; "*if necessary*, a second tie-breaking group of puzzles"; "*In case* a second tie-breaking group of puzzles is necessary"; "*Only in case* ties exist after such final tie-breaking puzzles have been checked will the letters be considered"; "the sponsor *anticipates* that a large number of persons *may* enter the contest and that a large number *may* solve, one, two or all three of the Groups of puzzles." [Italics supplied.] The court says that prospective contestants were "told in the Rules that the sponsors anticipated that a 'large number' of persons would solve all the puzzles." I cannot find

this statement in the Rules. In other words I do not agree with the court that "may" means "will."

For the foregoing reasons it seems to me clear that (1) the advertisement was intended and apt to convey to many
134 contestants the false idea that the contest was merely a puzzle contest and (2) the advertisement was intended and apt to convey to all or nearly all contestants, including entirely reasonable and careful ones, the false idea that there was at least a substantial chance that prizes would be won merely by solving puzzles.

The court finds that no reasonable reader of the advertisement would think that prizes might be won merely by solving puzzles. Obviously this finding of fact seems to me erroneous. Many readers lacked the knowledge, based on experience with similar contests, which appellees had and this court now has. Moreover, I think the court's finding is immaterial. To say that it invalidates the fraud order is equivalent to saying that if a scheme would not deceive reasonable men, to whom it is not primarily addressed, it may legally be used to take money from children and other simple people. The advertisement is primarily addressed to such people, since they are the ones likely to be attracted by crude and easy puzzles. "The fact that a false statement may be obviously false to those who are trained and experienced does not change its character nor take away its power to deceive others less experienced."[9]

The court says: "As we said in *Farley* v. *Simmons*, the question is what the advertisement is 'reasonably intended to cause the reader thereof to believe.'" Despite other language in the prevailing opinion, that appears to be the question which the court actually decides. But it is not the question before the court. It was the question before the Postmaster General. That is what we said in *Farley* v. *Simmons*. I think the court now confuses the Postmaster General's function with our own. The question before us is not what the advertisement was intended to cause the reader to believe, but what the Postmaster General could reasonably find that it was intended to cause the reader to believe. As Judge Learned Hand and this court have said, the Postmaster General was entitled to put "the most malign interpretation which can in reason be "put" on appellees' advertisement."[10] Conceding for the sake of argument that there may be some doubt whether appellees intended to convey a false idea, I do not see how there can be any doubt that the Postmaster General might reasonably

[9] *Federal Trade Comm.* v. *Standard Education Society*, 302 U. S. 112, 116.
[10] *Putnam* v. *Morgan*, 172 Fed. 450 451 (C. C., S. D. N. Y.); *Farley* v. *Simmons*, 69 App. D. C. 110, 115, 99 F. 2d 343.

find what he found. Neither, apparently does appellees' counsel. We asked counsel whether he argued that no reasonable man could conclude that appellees intended to convey the idea that their contest was exclusively a puzzle contest. He replied: "Of course we must concede that *a* reasonable man might draw that conclusion, but we contend that *the* reasonable man would not draw it.

135 In United States Court of Appeals for the District of Columbia

No. 9268. October Term, 1946

ROBERT E. HANNEGAN, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, APPELLANT

vs.

READ MAGAZINE, INC., ET AL., APPELLEES

Appeal from the District Court of the United States for the District of Columbia

Before EDGERTON, WILBUR K. MILLER, AND PRETTYMAN, JJ.

Judgment

Filed Dec. 9, 1946

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Per Mr. Justice PRETTYMAN.

Dated December 9, 1946.

Dissenting opinion by Mr. Justice EDGERTON.

138 Before Solicitor of Post Office Department

Excerpts from testimony

TRANSCRIPT OF TESTIMONY OF POST OFFICE INSPECTOR FRANCIS D. BOYLE BEFORE THE SOLICITOR FOR THE POST OFFICE DEPARTMENT

Whereupon FRANCIS D. BOYLE, called as a witness for and in behalf of the Post Office Department and, having been previously duly sworn, was examined and testified as follows:

Direct examination by Mr. MINDEL:

Q. Will you state your full name please, Mr. Boyle?
A. Francis D. Boyle; B-O-Y-L-E.
Q. And what is your occupation?
A. Post Office Inspector.
Q. How long have you been employed in that capacity?
A. Twenty five years and one month.
Q. In the course of your official duties, Inspector, did you undertake an investigation of the plan being conducted by the respondents in this case known as the "Hall of Fame" puzzle contest?
A. I did.
Q. During your investigation, did you observe advertisements appearing in the newspapers or elsewhere relating to this contest?
A. I did.
Q. Did you observe advertisements appearing in the Sunday News and in the Newsday and in Facts Magazine itself?
A. I did.
Q. I hand you Exhibits 1, 1-A, and 1-B and ask you if these are the mediums which I have just referred to.
A. They are.

* * * * *

Mr. BURKE. No objection.

139 By Mr. MINDEL:

Q. Inspector Boyle, did you also obtain a set of the puzzles which were being distributed in connection with this contest?
A. I did.
Q. And is this Exhibit 1-C representative of those puzzles?
A. It is.

* * * * *

Mr. MINDEL. Yes, sir. At this point I offer in evidence Exhibits 1, 1-A, 1-B, and 1-C, which have been identified by the Inspector. 1 and 1-B are advertisements from two newspapers.

1–A is a copy of Facts Magazine, issue of April, 1945. 1–C is a booklet issued by the operators of this contest containing the eighty puzzles which are said to comprise the puzzles to be solved as well as the rules.

* * * * *

Q. Mr. Boyle, did your investigation disclose who the operators of this contest are?

A. It did.

Q. And who are they?

A. The Publishers Service Co., its officers, and the subsidiaries or affiliates of the Publishers Service Co.

Q. And they are located where, Mr. Boyle?

A. On West Street, New York City; I believe it is 75 West Street.

Q. And can you tell us who the officers of the Publishers Service Co., Inc., are?

A. Mr. Sarazen is Executive Vice President.

Q. Do you know his full name?

A. Mr. Paul Sarazen. Miss Esther Fertel is the treasurer. A gentleman named Meyer is another officer; and a gentleman named Smith is another officer, president and secretary I believe.

Q. Mr. Smith is president you say?

A. Yes.

Q. What is the general nature of the business conducted by this firm?

A. They operate contests for themselves and for newspapers, publications, and other customers.

140 Q. And what is the relationship, do you know, Mr. Boyle, between the Publishers Service Co., Inc. and Facts Magazine?

A. Facts Magazine is a division of Read Magazine, and Read Magazine is a subsidiary or affiliate of Publishers Service Co.

Q. And what do you know as to the relationship between Publishers Service Co. and the Literary Classics Book Club of the Literary Classics, Inc?

A. Literary Classics, Inc., is another affiliate or subsidiary of Publishers Service Co.

Q. Do you know whether the officers of those subsidiaries just mentioned are the same or approximately the same as those of the parent company, the Publishers Service Co.?

A. Approximately the same.

Q. Is Mr. Sarazen an officer of the Facts Magazine and of Literary Classics?

A. He is.

Q. Are you aware, Mr. Boyle, of any other contests conducted in recent years of a similar nature by this concern?

A. I am.

Q. Did you make an investigation of any of those other contests?

A. I made an investigation of the "All-American" contest, and a smaller investigation of the "Read" contest. I know of an investigation of the "Music Appreciation" contest.

Q. When was the "All-American" contest held?

A. '42-'43.

Q. Did your investigation cover the complete operation of the contest?

A. It did.

Q. At that time was Mr. Sarazen associated with the concern operating the contest?

A. He was.

Q. Did you speak with Mr. Sarazen at the time you were conducting your investigation of the "All-American"?

A. I did.

Q. Did he turn over to you, Mr. Boyle, any parts of advertisements or literature used in the conduct of that plan?

A. He did.

141 Q. What did those papers consist of generally?

A. Advertisements, circulars, circular letters, and parts of circular letters.

Q. I hand you now a file of papers and ask you if those are the ones you were just talking of?

A. These are.

Q. Mr. Boyle, did you interview Mr. Sarazen in connection with the "Hall of Fame" contest?

A. I did.

Q. Did you learn at that time whether Mr. Sarazen has charge of the conduct of this contest, the "Hall of Fame"?

A. Will you kindly repeat your question?

Q. Did you learn whether Mr. Sarazen has charge of the general conduct of the "Hall of Fame" contest?

A. I did.

Q. And you say that he does have charge of it?

A. He does have charge of it.

Q. And you have already testified that he had charge of the conduct of the "All-American" contest; is that correct?

A. That is correct.

Q. Did Mr. Sarazen indicate to you that the present contest was to be conducted in the same manner as the "All-American" contest?

A. He said there was a difference between the "Hall of Fame" contest and the "All-American" contest.

Q. Were they vital differences or were the contests essentially the same?

A. The contests were essentially the same but there were differences.

Q. Will you state what the differences were to be?

A. The spelling rules were much more strict. All judging was to be done by the Ruben Donnelley Corporation under contract. They were to receive the solutions to the puzzles as soon as the money sent with them had been checked, and would retain the solutions until the rewards were made. The notice of the double-prize feature would be sent to qualified contestants early in the tie-breaker contest instead of after the puzzles and essays in the final tie-breaker contest had been received.

142 ASSISTANT SOLICITOR. I ask to clarify the record: The so-called differences just enumerated by the Inspector, are they features of the present "Hall of Fame" contest which were not contained in the "All-American" contest?

Mr. MINDEL. Well, if I may speak, the first feature mentioned, as I understand it, was the matter of handling the contest entries and the enforcement of the rule as to spelling, is that correct, Inspector?

The WITNESS. That's right.

ASSISTANT SOLICITOR. Well now, in which contest—the former or the present one—was the rule concerning spelling more strict? That isn't clear.

Mr. MINDEL. It is to be more strict, according to the Inspector's testimony, in the present case. Have you finished testifying as to what the differences are?

The WITNESS. No; there are still two differences. There was to be a consolation contest in which those persons who sent in wrong answers to the first phase of the "Hall of Fame" contest would take part. The puzzles in this group would be identical with those in the "Hall of Fame" contest.

By Mr. MINDEL:

Q. You mean identical in their general character, isn't that what you mean?

A. That's correct.

Q. Aside from those differences which you have noted the contests will be conducted in the same manner?

A. Yes.

Mr. MINDEL. At this time, Mr. Solicitor, I make an offer as Exhibit 2-A and subsequent letters under Exhibit 2 of the various papers and letters which the Inspector has identified as having been a part of the "All-American" contest.

ASSISTANT SOLICITOR. Submit them to the counsel for the respondent.

Mr. MINDEL. Do you want to see them again?

Mr. BURKE. Yes, please.

* * * * * *

143 By Mr. MINDEL:

Q. Inspector, when you spoke with Mr. Sarazen relative to the "Hall of Fame" contest, which is of course the current contest, did he offer you any samples of the literature being used in connection with this contest?

A. He did.

Q. I hand you papers which I have marked "Exhibit 3 through 9," and ask you if these are the ones which were handed to you by Mr. Sarazen.

A. They were given me by Mr. Sarazen.

Mr. MINDEL. I offer in evidence these papers which have been marked "Exhibits 3 through 9."

Mr. BURKE. No objection.

* * * * * *

By Mr. MINDEL:

Q. In your examination, Inspector, of the two contests, did you note any difference generally speaking as to the puzzles offered in each? Were they both offered in the same manner to the contestant?

A. They were both rebus puzzles. There were 120 to a set in the first contest and 80 to a set in the second contest. The ones in the "Hall of Fame" contest differed from those in the "All-American" contest in that there was a small legend over each puzzle in the "Hall of Fame" rebus which did not appear in the "All-American" puzzles.

Q. And what did the legend refer to; relate to?

A. It was descriptive of the puzzle.

Q. The subject of the puzzle, is that what you mean?

A. Descriptive of it.

Q. Did your investigation of the "All-American" disclose, or rather, did it show that that contest terminated with the completion of the first series of puzzles?

A. It did not show that.

Q. And there was then offered, was there not, as the exhibits indicate a tie-breaking series of puzzles in the "All-American"?

A. There was.

Q. And were the prizes awarded upon the completion of that series of puzzles?

A. They were not.

144 Q. Did it then go to a second tie-breaker series of puzzles?

A. It did.

Q. And with that series of tie-breakers, second series of tie-breakers, wasn't it required that an essay of some kind be submitted?

A. It was.

Q. Can you testify whether the prizes in the "All-American" contest were awarded on the basis of the accuracy of the second tie-breaker solution submitted?

A. They were not.

Q. Can you tell us then upon what basis they were awarded?

A. They were offered on the excellency of the essays.

Q. While investigating the "All-American" contest, Mr. Boyle, you say you spoke with Mr. Sarazen. I imagine more than once?

A. Several times.

Q. Did he at any time advise you as to the number of entries that were received in the several stages of that contest?

A. He did.

Q. Did he tell you how many entries were submitted in the first series of the puzzles?

A. 352,000.

Q. And how many of those did he advise you were in complete form so that they were submitted to the judges?

A. 132,000.

Q. And how many participated in the first tie-breaker series?

A. Approximately 95,000.

Q. Would that indicate that approximately 95,000 submitted correct solutions in the first series of puzzles?

A. No. Because there were a number who submitted correct solutions to the first series of puzzles who did not engage in the tie-breaker.

Q. Well, we can say at least 95,000; is that correct?

A. That is correct.

Q. How many, Mr. Boyle, participated in the second-tie-breaker series and submitted essays?

A. 77,000.

145 Q. Do you know how many submitted correct solutions to the second tie-breaker and therefore had their essays judged?

A. 55,000.

Q. Have you made a computation that would show what percentage that 55,000 is of the 132,000 whose first series of puzzles were submitted to the judges for judging?

A. I have.

Q. Will you state what it is?

A. Approximately 41 percent.

Q. 41 percent of those who completed the first series went through to the point where their essays were judged?

A. Yes.

Q. Did Mr. Sarazen in connection with the present contest make any statement to you as to whether or not it would proceed through the stages as in the "All-American" and that the essays would be the determining factor of the winners?

A. He told me that essays would be required.

Q. What, Mr. Boyle was this consolation contest that you referred to? What was that supposed to be?

A. If a person failed in the initial puzzle contest, they were given a chance to solve additional puzzles for a fee of three dollars and there would be prizes offered for their further participation in a separate contest from the original contest.

Q. Did Mr. Sarazen make any statement as to the fees to be paid in connection with the consolation contest as well as with the tie-breaking puzzles?

A. They were to be the same.

Q. The same as what? You mean to say the same as the first original series of puzzles?

A. Precisely.

Q. A total of three dollars?

A. That's right.

Q. In the "All-American" contest was a similar scale of fees paid by the contestant?

A. There was.

Q. And you also made previously a reference to a double-prize feature. Will you tell us just what that is supposed to be?

A. At the time when the solutions for a second tie-breaker in the "All American" contest had been submitted contestants
146 received notice that if they would pay $7.50 they would be entitled to receive double the amount of any price they might win.

Q. Did Mr. Sarazen say that that feature would be a part of the current contest?

A. He did, but that it would be placed into effect at a different time during the contest.

Q. As a matter of fact, have you seen literature of the contest operators in connection with the double-price feature of the current contest?

A. I have.

Q. Does this file which I hand you, Inspector, contain the offer of the double-prize feature just referred to?

A. It does.

Q. Will you state what that file of papers is that I have handed you, and which you have just examined?

A. This is the file of papers submitted by Adele M. Beckman of St. Louis, Missouri, which I have received through official channels.

Mr. MINDEL. I may state, Mr. Solicitor, that the letter of transmittal from Mrs. or Miss Beckman attached to the file is not offered as part of the evidence but merely to show its source.

Mr. BURKE. We concede its source so you needn't offer the letter unless you wish. I have read it. We concede its source as the Inspector testified. [Counsel examines entire file.]

No objection.

Mr. MINDEL. I offer as Exhibit 10 and sub-exhibit numbers this file just referred to as having been received from Adele M. Beckman, St. Louis, Missouri.

* * * * *

And I now ask the Inspector to identify this file as correspondence with the company and which will be marked "Exhibit 11–A" and sub-exhibit number and is conducted with Mr. Martin Wahl. Is that one of the files, Inspector, that also came into your possession in the conduct of your—investigation?

The WITNESS. Yes; it came through official channels.

Mr. BURKE. No objection.

* * * * *

147 By Mr. MINDEL:

Q. Inspector, did there also come to your attention correspondence of the operators of this contest with those that were brought into the consolation contest?

A. There was.

Q. I hand you now a file of correspondence between Judith S. Johnson and a Mrs. A. D. Mott, of Graybulle, Wyoming, and ask you to identify that.

A. I identify this as having been received through official channels.

* * * * *

By Mr. MINDEL:

Q. Inspector, in your investigation did you learn who judges the solutions to the puzzles submitted in this contest?

A. Ruben H. Donnelley Corporation.

Q. Ruben H. Donnelley Corporation?

A. That is correct.

Q. Located at New York?

A. In New York City.

Q. Is that a regular part of their business?

A. That is the function of one of their departments.

Q. Did you interview the Donnelley people concerning this contest?

A. I did. I talked to Mr. Morse.

Q. Do you know Mr. Morse's full name?

A. I don't recall his full name, no.

Q. What is his office there? What is his capacity?

A. He was in charge of the Contest Section.

Q. And as such he has charge of this particular contest?

A. Yes.

Q. That is, insofar as the Donnelley company handles it. Could you learn from Mr. Morse how many entries had been turned over to him for judging in the first series of the "Hall of Fame" contest?

A. At that time 85,000 approximately.

Q. 85,000 had submitted complete solutions, am I correct, and therefore they had been turned over to Donnelley for judging as to accuracy, is that correct?

A. That is correct.

148 Q. Did he indicate that that would be all that would be received?

A. No; he expected that there would possibly be 5,000 more.

Q. Making a total of 90,000 entrants who would have their puzzles judged for accuracy; is that correct?

A. Approximately; that is correct.

Q. Were these entries which Donnelley company received first handled by the Publishers Service Co.?

A. They were checked as to financial reasons first. For instance, the money was all paid in and then they would be turned over to the Donnelley company for judging.

Q. And I assume also, am I correct, that the Publishers Service Co. by that initial treatment would also eliminate those who did not complete all 80 puzzles. Is that correct? In other words, persons who might have sent in less than 80 solutions?

A. I do not know whether they were eliminated by Publishers Service Co. or by Donnelley.

Q. Mr. Boyle, upon the basis of your investigation of the operation of "All-American" and the figure of 90,000 which you have just given as the number of entries to be judged in the first series, can you make any estimate as to the number which in this contest will have their letters judged?

A. Well, if it was a direct parallel with "All-American" contest, 41 percent of the 90,000 would have their letters judged.

Q. Well, I get that—just for the record—a figure of 36,900.

A. I believe that is correct.

Q. Did your investigation of the "All-American" disclose how much money was realized by the operators in the operation of the contest?

A. Approximately a million and a half was taken in.

Q. Approximately $1,500,000 was taken in from the contestants in the "All-American" contest?

A. Yes, sir.

Q. And can you testify as to how much was paid out in prize money?

A. About $30,000. May I change that? It must have been $40,000 because the first prize was doubled in one instance, and as there were two first prizes given it would naturally go beyond $30,000 and would therefore approximate $40,000.

149 Q. In talking with Mr. Sarazen about the current "Hall of Fame" contest did he indicate to you how extensively it was to be advertised?

A. I believe the expression "nation-wide" was used.

Q. "Nation-wide." Did he indicate that it was to be to an extent comparable to that in the "All-American"?

A. He didn't say.

Q. Do you know what the extent of the advertising was in the "All-American"?

A. Nation-wide.

Q. Did Mr. Sarazen at any time indicate to you that he anticipated that the current contest would stop with the judging of the first 80 puzzles?

A. He did not.

Q. Did he indicate that he expected it would not stop with the judging of the first 80 puzzles?

A. Yes, because we discussed the matter of essays.

Q. Did Mr. Sarazen indicate how many entrants he expected in the consolation contest?

A. He did not. He merely pointed out that if he received a certain number, it would be sufficient to pay for the prizes offered.

A. I believe 6,000.

Q. Do you recall what that number was?

Q. When interviewing Mr. Morse of the Donnelley outfit did you learn from him whether arrangements had already been made for the judging of the letters or essays in the current contest?

A. Yes, that was discussed by us.

Q. And you testified that he said that such arrangements had been made at that time?

A. Yes.

Q. And approximately when was that interview held? Let me ask you this way: Was that at the outset of the conduct of this contest?

A. No. The contest had been in effect for some time and the interview was held on June 22.

Q. And the closing date for the first series of puzzles was June 16; is that correct?

150 A. Yes.

Q. Well, the record will show that. Have you any information, Mr. Boyle, as to the size of mailings being made by the Publishers Service Co. or the Facts Magazine relative to this contest?

A. Yes; I have.

Q. Will you state what that is?

A. On July 3rd at Grand Central Annex there were 7,888 registered letters mailed; the same day at Church Street Annex there were 44,584 registered letters mailed. On July 5th there were 34,994 registered letters mailed; July 6th, 583; July 10th, 1,338; July 11th, 176; July 14th, 46, a total for that period of 89,609 registered letters mailed. The following registered letters were delivered to Facts Magazine by Church Street Annex on July 5th, 24; July 6th, 7; July 9th, 227; July 10th, 337; July 11th, 197; July 12th, 1,148; July 13th, 2,153; July 14th, 1,761; July 16th, 3,264; July 17th, 795; July 19th, 670, a total of 11,483 registered letters delivered to the Facts Magazine.

Q. Over what period of time?

A. July 5th to July 19th.

Q. Do you have any figure as to the amount of regular ordinary mail being received aside from registered?

A. On July 19, 1945, approximately 20,000 pieces of first-class mail were delivered.

Q. When you interviewed Mr. Sarazen in connection with this contest, "Hall of Fame," how much of the literature to be used in the contest had been prepared?

A. Only that pertaining to the first phase.

Q. All of which you have identified and has been entered here in evidence, is that correct?

A. Yes, sir.

Q. In your investigation of the "All-American," Mr. Boyle, did you examine the final prize-winning entries?

A. I did.

Q. What percentage did you find of those entries had paid the extra fees entitling them to a double prize?

A. Four-sevenths is the proportion.

Q. Four-sevenths. Would 65 percent be about that?

A. About 44,000 out of 77,000 had paid the double-prize fee.

151 Mr. MINDEL. No further questions.

Cross-examination by Mr. BURKE:

Q. Mr. Boyle, the puzzles in the "Hall of Fame" contest are different from the puzzles in the "All-American" contest, are they not?

A. They are the same type but they are different puzzles.

Q. By the same type you mean that they are rebus puzzles?

A. Yes.

Q. And a rebus puzzle is one which pictures an object and requires identification of that object, isn't that right?

A. That is right.

Q. But the puzzles that constituted the "Hall of Fame" contest are puzzles depicting different objects than those depicted in the puzzles used in the "All-American" contest, isn't that right?

A. As far as I know; yes.

Q. You examined the puzzles used in the "All-American" contest?

A. Yes.

Q. And you have examined the puzzles used in the "Hall of Fame" contest to date?

A. Yes.

Q. So that the contests differ in that the puzles are different?

A. Yes.

Mr. MINDEL. I object to the conclusion called for by the question as do the contests differ. They differ, I believe, in more respects than that.

Mr. BURKE. Well, they differ at least in that respect, do they not, Mr. Boyle?

The WITNESS. That is one difference.

* * * * *

By Mr. BURKE:

Q. Mr. Boyle, you gave a percentage of the persons who entered the All-American Contest who were required to submit letters for judgment, did you not? What percentage was that?

A. I believe it was around 41%.

152 Q. Have you examined the puzzles thus far in the Hall of Fame Contest?

A. I have.

Q. Have you——

A. (Interposing.) That is the first and second series.

Q. Have you made any estimates of the number of contestants who will probably have to submit letters?

A. Only from the percentages prevailing in the All American Contest.

Q. Those percentages would be thrown off if the puzzles became progressively more difficult, would they not?

A. I believe they would.

Q. Rebus puzzles are capable of being made difficult, are they not?

A. I don't know enough about them to be able to say that. I imagine they could be though.

Q. How long did you investigate the All American Contest?

A. A little over a year.

Q. During that time you saw the puzzles and their solutions?

A. I did.

Q. Did you attempt to solve some of them yourself?

A. I did.

Q. Did you succeed?

A. I did.

Q. From your experience in solving those puzzles do you think you could solve any rebus puzzle?

A. No.

* * * * *

By Mr. BURKE:

Q. Did you make certain criticisms of that contest to Mr. Sarazen?

A. No.

Q. Did you discuss the matter of the timing of the so-called double-prize offer with him?

A. I was present when it was discussed.

* * * * *

Q. Mr. Boyle, the rules of the "Hall of Fame" contest promise that the sponsors will offer a group of eighty puzzles for solution. Is that so?

153 A. Yes.

Q. Did the sponsor offer a group of eighty puzzles for solution?

A. Yes.

Q. And in exchange for the remittances made with the solutions to the eighty puzzles, did the sponsor promise the contestant a book, published by the Literary Classics Book Club?

A. I do not recall the wording of that offer.

Q. I refer you to Rule 8, appearing in Exhibit 1, is it?

Mr. MINDEL. 1-A, at least. Page 52.

Mr. BURKE. Thank you, which reads as follows:

"Each contestant who submits a complete group of solutions for this contest qualified in accordance with the Rules will receive the book selected for the month of July by the Literary Classics Book Club."

Is that a part of the rules of this contest?

Mr. MINDEL. Well, your question has answered itself, Mr. Burke.

By Mr. BURKE:

Q. Do you recall that to be a part of the rules of this contest?

A. Yes.

Q. Then did the sponsor in accordance with his promise deliver to each of such contestants the book published for July by the Literary Classics Book Club?

* * * * *

The WITNESS. I know of one person who received a book.

By Mr. BURKE:

Q. Have you seen that book?

A. I have not.

Q. Have you seen any of the books?

A. I have not.

Q. Did Mrs. Beckman inform you whether or not she had received her copy of the book?

A. I don't recall.

Q. I show you a book and ask you if that is the book which was sent to the contestants so qualified?

A. The title is the same.

Mr. BURKE. May it be marked for identification?

ASSISTANT SOLICITOR. Yes.

Mr. BURKE. I mark it myself, I take it.

ASSISTANT SOLICITOR. Mark it Respondent's Exhibit No. 1 for Identification.

(Book entitled "The Way of All Flesh" was marked "Respondent's Exhibit No. 1" for Identification.)

By Mr. BURKE:

Q. Didn't you attempt in your investigation, inspector, to find out whether the sponsor in fulfillment of its promise had sent the promised book to the contestants?

A. I did not.

Q. Did you think that immaterial?

Mr. MINDEL. Objection, as to what he thought.

ASSISTANT SOLICITOR. I don't think that is competent, Mr. Burke. After all the inspector is a gatherer of facts. The opinions are reached after the facts are submitted to the Solicitor's Office.

Mr. BURKE. May I have an exception?

ASSISTANT SOLICITOR. Yes; let the record show your exception.

By Mr. BURKE:

Q. Mr. Boyle, the rules of the contest promise that in the event of ties, a second tie-breaking group of puzzles divided into series

exactly like the first group would be submitted for solution by the contestants. Do you know whether or not the sponsor in fulfillment of that promise so submitted that group of puzzles?

A. I do know.

Q. It did?

A. Yes.

Mr. MINDEL. Just one moment, there's a little confusion. You were speaking of the second tie-breaking puzzle.

Mr. BURKE. No; the first tie-breaker.

By Mr. BURKE:

Q. And in the "All-American" contest the sponsor promised the contestant that in case of a second tie-breaking group of puzzles being necessary, contestants eligible to solve the same would be required to accompany their solutions to the second tie-breaking group of puzzles with a letter of not more than two hundred words on the subject "My Choice for American Hero No. 1." Do you know whether or not the sponsor accepted and judged those submissions of letters on that subject?

A. Yes.

Q. And you know that the winner of the prize was determined on the basis of the excellence of that letter?

A. So far as I know.

Q. In the "Hall of Fame" contest, do you know that Rule 9 provides that in case a second tie-breaking group of puzzles is necessary contestants eligible to solve same will be required to accompany their solutions to this second tie-breaking group of puzzles with a letter of not more than two hundred words on the subject "The Puzzle I Found Most Interesting and Educational in This Contest"?

A. There is a rule.

Q. The rules of the contest provide that any contestant who becomes eligible to submit and who does submit a group of qualified tie-breaking solutions will receive the following month's Book Club selections. Do you know whether or not the entrants in the first tie-breaker who submitted complete solutions to that group of eighty puzzles received from the sponsor the promised book?

A. I don't know.

Q. You didn't investigate that?

A. No.

Q. Did anyone complain to you that he had not received the promised books?

Mr. MINDEL. Objection. Immaterial to the issues.

ASSISTANT SOLICITOR. I overrule your objection, Mr. Mindel.

The WITNESS. I have received no such complaint.

Mr. BURKE. Then, as far as you know, the sponsor fulfilled his promise by delivering the promised books?

The WITNESS. As far as I know.

Mr. BURKE. The sponsor promised in the "All-American" contest a——

Mr. O'BRIEN (interposing). Mr. Solicitor, I hate to interrupt you but I want to move to strike the last question and answer.

154 It seems to me that that is a meaningless piece of question and answer if it is interpreted in the normal way but it might be misinterpreted. He didn't ask the inspector whether he knows what the sponsor did. So far as he knows he doesn't know what he did. To me, Mr. Solicitor, that is very obscure, objectionable and incompetent question and answer. It has no relevancy to anything except that it might be misinterpreted an indication that the inspector said or intended to indicate that the sponsor did deliver the books. The inspector doesn't know one way or the other.

ASSISTANT SOLICITOR. Your objection is, then, to the form of the question?

Mr. O'BRIEN. Form of the question and the irrelevancy of the inspector's not knowing.

ASSISTANT SOLICITOR. I think the inspector can answer that question if he knows but what you seek to do is to clarify whether he knows or not. Let him answer whether he knows that fact and I think that will clarify without striking it from the record. Do you know whether the book was furnished, Mr. Inspector?

The WITNESS. I do not know.

ASSISTANT SOLICITOR. Whether it was or was not——

The WITNESS (interposing). I know nothing about it.

By Mr. BURKE:

Q. No one complained to you, however, that he had not received the promised book?

A. I have no such complaint.

Q. And you were in contact with people who were participating in the contest, were you not?

A. I don't understand the question about being in contact with them.

Q. Did you have any communication with anyone who was a participant in the contest?

A. I received complaints from them.

Q. So that you were in contact through the receipt of complaints from them?

A. Yes.

155 Q. But the complaints didn't state that they had not received the promised book?

A. I had no complaints on that score as far as the second book was concerned.

Q. As far as the first book was concerned, did you have any such complaints?

A. I knew that one of the books, at least, had been delivered, the first book.

Q. That is, "The Way of All Flesh?"

A. That was the title of the book which had been delivered.

Q. Do you know of any promise made by the sponsor to the contestants which had not been fulfilled?

A. No.

Mr. BURKE. That is all.

Redirect examination by Mr. MINDEL:

Q. Do you know, Inspector, that all of the promises made by the promoters have been fulfilled to the contestants? Do you know, that is, yes or no, whether or not all of the promises made by the promoters have been fulfilled?

A. No.

Q. Aside, Inspector, from the language contained in rules 8 and 9, did you find in your examination of the exhibits in the "Hall of Fame" contest any statement that the contestants would have to pay additional fees should the contest go beyond the first 80 puzzles?

Mr. BURKE. I object upon the ground that the rules speak for themselves. They are in evidence.

Mr. MINDEL. I am asking him if he found anything beyond the rules, in addition to the rules, in examining the exhibits.

Mr. BURKE. And I am objecting. The exhibits speak for themselves.

ASSISTANT SOLICITOR. That is my opinion, too, Mr. Mindel, that they do speak for themselves. If it is not there you can call attention to that fact. If counsel for the respondent thinks it is there he can point it out.

Mr. MINDEL. No further questions.

* * * * *

157 The following excerpts are from the testimony of Paul Sarazen at the hearing before the Solicitor of the Post Office Department (transcript of Proceedings, pp. 136, 148–150):

Q. Mr. Sarazen, were there any rebus puzzle contests of the same general nature as the "Hall of Fame" contest in which the prize was awarded upon the basis of the judgment of puzzles only as distinguished from the judgment of letters?

A. Yes.

Q. How many?

A. Well, I can name two or three; if I can refer to the records, I can name more?

Q. How many were there? I didn't ask you to name them, Mr. Sarazen.

A. There must have been a dozen.

Q. Can you name some of them?

A. I would say the Boston Herald Travelers contest is one; the Hearst paper in Boston is another one; the Dallas News is another one; the Detroit Times is another one.

Q. In each of those contests did the rules provide for the resolution of final ties by an essay?

A. Yes.

* * * * *

Q. In your testimony you stated that in a number of contests which the Publishers Service Co. conducted for different newspapers the awards were given without consideration of the letters.

Do you recall that testimony?

158 A. I do.

Q. Now, will you tell us during what period of time those contests were conducted?

A. Between 1928 and 1941, I would say.

Q. And you say that all of them were rebus contests the same as in this one?

A. I did not.

Q. You do not say that?

A. I do not.

Q. Well, do you say that they were not rebus contests, those particular ones?

A. I do not.

Q. In other words, some might have been and some might not have been.

A. That is right.

Q. Thank you. Since 1941 have any contests conducted by you been decided without consideration of the letter or essay?

A. Since the end or the beginning of 1941?

Q. Since 1941, since the end of the year.

A. No.

Q. And in the "All-American" contest were the prizes there awarded without consideration of the essay?

A. They were not.

Q. They were awarded then, would you say, upon the basis of the essay?

A. On the basis of the best essay; yes.

Q. And that contest, will you say, was similar to the present contest?

159 A. I said and say now that it was similar in pattern to the present contest.

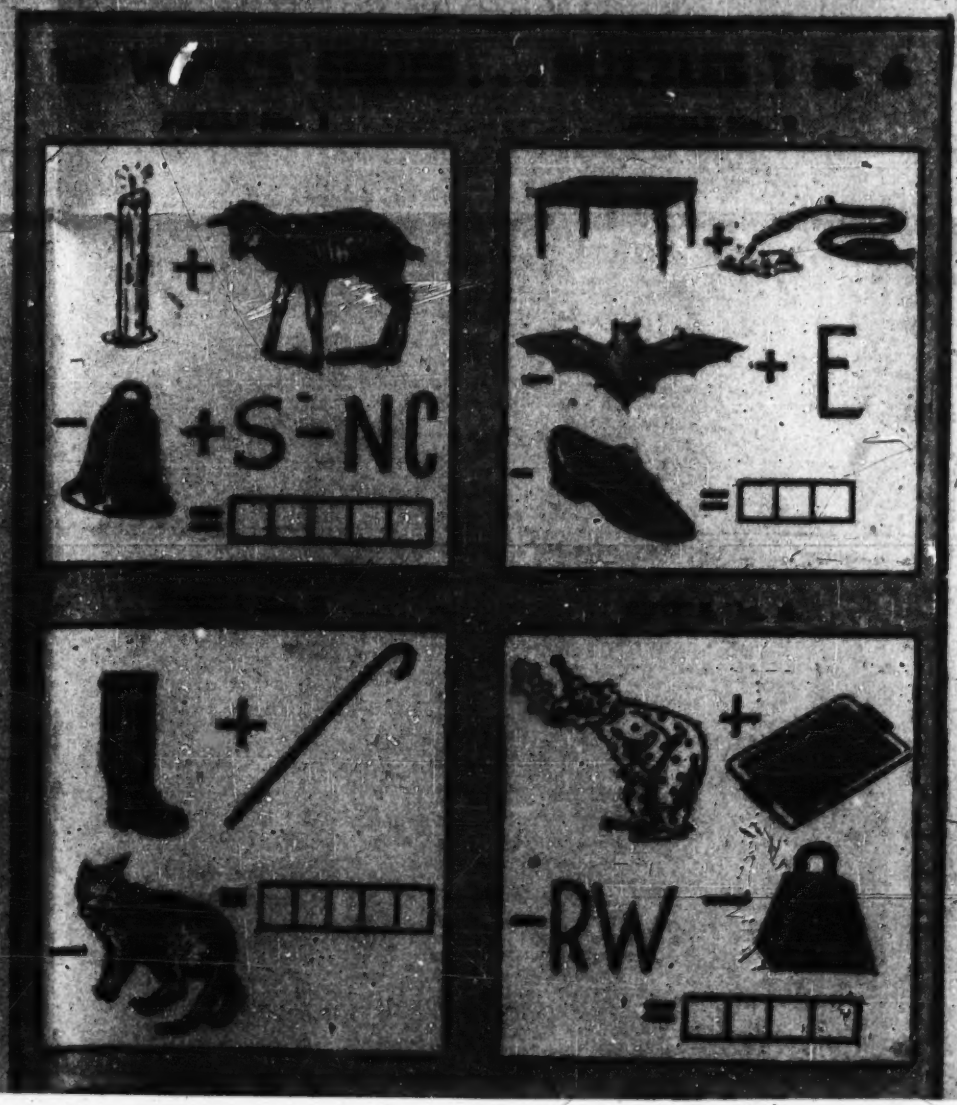
THE ALL-AMERICAN PUZZLE CONTEST

WIN $10,000.00 1st PRIZE

A THRILLING CONTEST TO DELIGHT THE CONTEST FANS OF COLUMBIA

Conducted by America's Distinguished Newspaper Service

(CAN YOU SOLVE THESE SIX PUZZLES?)



IT STARTS TODAY! Mail Your Solutions on Entry Form in Lower Right Corner

TODAY(Yesterday, Tomorrow) marks the beginning of a new, delightful contest. — THE ALL-AMERICAN PUZZLE CONTEST. You can enter TODAY by using the Entry Form printed in the lower right corner of this page. Mail your entry in accordance with the rules. Contest closes Thursday of this week, August 20th.

You may win First Prize ($10,000) or any of the other cash prizes. You do so by solving the puzzles and sending your answers in accordance with the rules.

Closing date of this contest is midnight on Thursday, August 20th. Entries must be postmarked not later than midnight of that date. Winners will be announced in The State on Sunday, August 30th.

$15,000.00 IN PRIZES

1st Prize $10,000.00

2nd Prize ... $2,000.00

3rd Prize ... $1,000.00

All Prizes ... $15,000.00

Entry Form in Sunday, August 16

HOW TO SOLVE THE PUZZLES

Rules and Regulations governing this contest are printed in the Entry Form on page 4-A of this paper.

(SAMPLE PUZZLE)





$10,000 1st Prize; $2,000 2nd Prize; $1,000 3rd Prize

One Hundred Cash Prizes Totaling $15,000.00!

Now if you can solve the puzzle above, hold the page to read the explanation in the center of this page under the heading "How to Solve the Puzzle." Then find the good American name with positive opportunity!

Mail Entry Form Printed Below Not Later Than Midnight, Thurs., Aug. 20th

FILL IN YOUR SOLUTIONS CAREFULLY ON THIS OFFICIAL ENTRY FORM

OFFICIAL ENTRY FORM

START TODAY! YOU CAN WIN $10,00

The ALL-AM PUZZLE

$15,000.00



Can You Solve These 6 Puzzles?

$15,000.00 in PRIZES

1st Prize	$10,000.00
2nd Prize . .	$2,000.00
3rd Prize . .	$1,000.00
4th Prize	$500.00
5th Prize	$250.00

FIRST WEEK'S SERIES — PUZZLES No. 1-6

The six puzzles printed below comprise the first week's series of puzzles in this contest. Each puzzle represents a great American name. In each case the solution of the puzzle is the LAST NAME of a distinguished American. Before trying to solve these puzzles, study carefully the explanation provided on the page at right.

PUZZLE No. 1



PUZZLE No. 2



$10,000.00 FIRST PRIZE! START TODAY!

MERICAN CONTEST

00 in Prizes

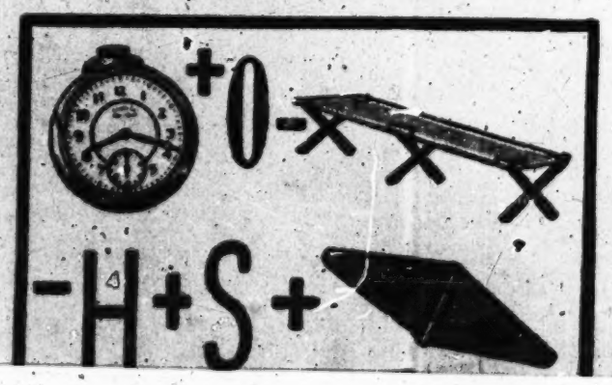
YOU CAN WIN $10,000.00 1st PRIZE in this contest







How to Solve the Puzzles
(SAMPLE PUZZLE)



Start Today! Solve the 6 Puzzles Printed on the Page at the Left. Win $10,000.00 1st Prize!

TODAY, you are invited to enter a new, delightful contest, — THE ALL-AMERICAN PUZZLE CONTEST. You can enter TODAY by using either of two Entry Forms provided on these pages. Mail your entry on or before midnight, Thursday of this week, August 20.

You can win a First Prize of $10,000, or any of 99 other cash prizes. You win by solving the puzzles and submitting your answers in accordance with the rules.

Here is a contest of skill,—with puzzles based on names of famous American men and women, names of thrilling American locations, names you have loved since your earliest recollections, names, many of them, on the tip of your tongue. BUT,—can you find these names in the puzzles?

Each Week You Send In Answers In This Contest

guarded in this file from week to week. At the conclusion of the contest, you can check your file against that of any winner.

In this announcement you will find two Entry Forms,—one in the lower left corner of the left page and another in the lower corner of the right page. Two forms are provided for the reason that more than one member of a family may wish to enter the contest. In this contest every member of the family is eligible to enter and to win. However, no person will be awarded more than one prize, the highest prize won by any entry submitted by that contestant.

Enclose 15 Cents With Each Series When Sending In Your Answers

When sending in each weekly series of answers, enclose 15 cents ...oin, in accordance with Rule No. 7. At the conclusion of the ...est, when winners are announced and prizes awarded, each

5th Prize	$100.00
6th Prize	$100.00
10th Prize	$100.00
Next 90 Prizes, Each $5	$450.00
Total 100 Prizes	$5,000.00

More Than One Member of a Family Can Enter and Win

The Entry Form are printed in the arrangement — one below, and another in the lower right corner of the page at the right. Either of these Entry Forms can be used. The reason two Entry Forms are printed is that several members of the family may wish to compete in this contest. That is perfectly permissible in this contest. Any member of the family can enter and win.

ENTER TODAY! WIN $10,000.00!
MAIL ENTRY FORM BELOW!

Act today—on this great prize-winning opportunity! Fill in your solutions to Puzzles 1-6 on the Entry Form below. Mail Entry Form before midnight, Thursday, August 30th.

OFFICIAL ENTRY FORM

Date _____

1. _____ 4. _____
2. _____ 5. _____
3. _____ 6. _____

Name _____

Address _____

City _____ State _____

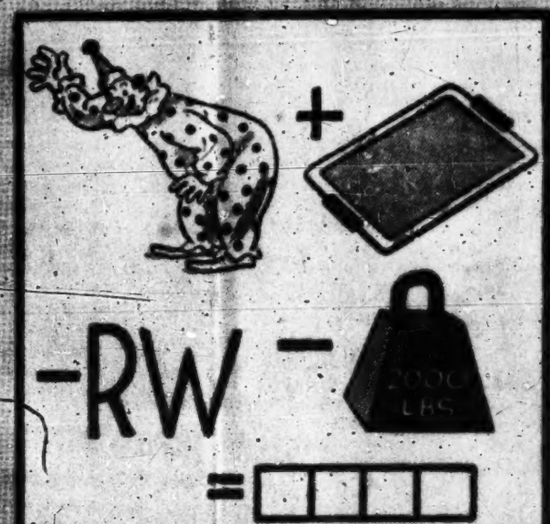
1st WEEK'S SOLVERS

Print and mail this Entry Form by Midnight of Thursday, August 30th.

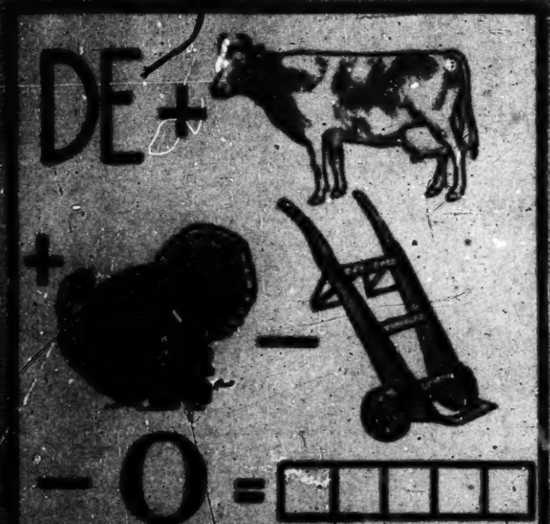
PUZZLE No. 3



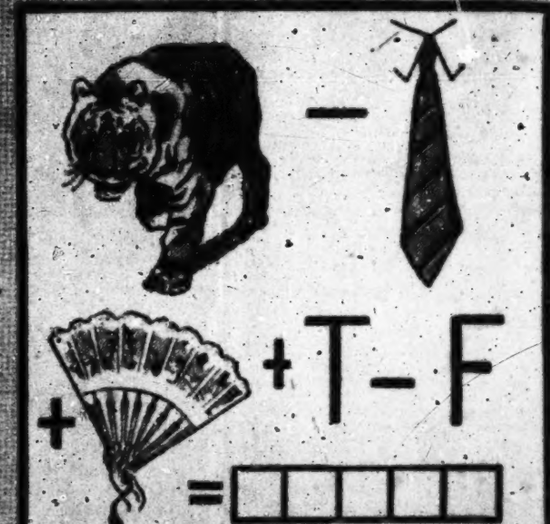
PUZZLE No. 4



PUZZLE No. 5



PUZZLE No. 6



USE EITHER ENTRY FORM — Send in Yo

Now, the Sample Puzzle above. It was purposely made easy to show you how to solve the puzzles. Notice that there are six small squares illustrated. Let's say that these six squares plus and minus signs, which means that you add or subtract. Let's solve the puzzle together. The first object is A-C-A-T-O-N. Therefore, write down the letters A-T-C-H. Now you are told to add the letter O, and by so doing you have W-A-T-C-H-O. Then you are told to subtract the letter C, which means that you delete the letter C-O-T. That leaves you W-A-H, from which you are then told to subtract H, leaving you W-A. Then you are told to add S and RINGE, giving you W-A-S-H-E-S. To that add TOP and the letter N, and you have W-A-S-H-I-N-G-T-O-N. Take away S, add T, and you have the name of the Father of our Country, WASHINGTON.

If you can, fill in your solutions on the Entry Form printed in the lower right corner of this page. See that your name and address are printed or written legibly. Entries must be mailed ON OR BEFORE MIDNIGHT, Thursday night, August 20th.

Study the Sample Puzzle Before Trying to Solve the First Series

Before you try to solve the six puzzles of the 1st Series, be sure to study the sample puzzle and the explanation. You will find this sample puzzle printed on this page. Look at every object. Read the explanation carefully. Don't even try to solve the first six puzzles unless you understand each and every detail involved in the solving of this sample puzzle.

Submit Solutions by Thursday Midnight Each Week

Mail your answers in this contest by Thursday at midnight of each week. Once you enter the contest, you will be mailed the various series of puzzles as they are issued from time to time, together with answer forms on which you can submit your solutions. Once we receive your entry, your own private file will be established, and your weekly solutions will be carefully safe-

THE RULES — Please Read Them Carefully

Answers by Midnight, Thursday, Aug. 20th

AMERICA'S OUTSTANDING CONTEST ORGANIZATION CONDUCTS THIS CONTEST

This contest is being conducted in its entirety by one of America's foremost contest organizations,—the Publishers Service Company, the same company which has conducted the great majority of the large puzzle contests for many of the nation's leading newspapers and manufacturers. All of the puzzles used in the ALL-AMERICAN contest are new and original and have never before been presented.

Here is a contest of, by and for Americans . , . featuring the names of the men and women who have made America great and are making it ever greater.

Here is a contest in which the names of Great Americans have been ingeniously puzzle-ized . . . to intrigue and entertain you, and to bring you great prize-winning opportunities.

A contest packed with thrills . . . Not only the thrill that comes with solving clever puzzles, but the thrill of recognizing names that mean and have meant so much to America . . . the thrill that comes with the recollection of the great deeds of patriots, statesmen and pioneers.

As you proceed from puzzle to puzzle you will be filled with pride at the roster of illustrious names that flash before you. And you will find this contest not only a grand way to win big money, but a means of refreshing your memory of America's greatest heroes, and America's stirring episodes.



START NOW! WIN $10,000.00 1st PRIZE!

Mail Your Entry By Midnight, Thursday Night

Decide to enter this contest now. Here is a thrilling opportunity for those who relish a contest of skill. Solve the six puzzles on these two pages, and mail your entry by MIDNIGHT, THURSDAY, August 20th. You will find the 2nd Series of puzzles in next week's issue. In addition, the moment we get your Entry, we will begin mailing you the various weekly series of puzzles. Address your envelope to: ALL-AMERICAN CONTEST, P. O. BOX 88, TRINITY STATION, NEW YORK, N. Y.

MAIL THIS ENTRY FORM

ON OR BEFORE MIDNIGHT, THURS., AUG. 20th

OFFICIAL ENTRY FORM

ALL-AMERICAN PUZZLE CONTEST
P. O. Box 88, Trinity Station, New York, N. Y. Date

I submit the following as my solutions to Puzzles 1-6 in your Puzzle Contest.

1. 4.
2. 5.
3. 6.

I enclose 10 cents for each to qualify me for a prize in competition with the official rules.

Name
Address
City State

1 WEEK'S SERIES

Please mail this Entry Form by Midnight of Thursday, August 20th.

756107 O - 47 (Page p. 97) No. 2

Q. It involved a series of puzzles to start with, did it not, and then two tie-breaking series of puzzles?

A. And an essay; yes.

160 [Photostat.]

161 [Photostat.]

162 [Photostat.]

163 *Government's Exhibit 2-E.*

America's Distinguished Newspaper Service presents

THE ALL-AMERICAN PUZZLE CONTEST

First Prize $10,000.00

Address All Communications to: Puzzle Contest Editor, All-American Contest, P. O. Box 88, Trinity Station, New York, N. Y.

From the Contest Editor:
To the Entrant.

DEAR FRIEND: We have received your solutions in our All-American Puzzle Contest. Immediately upon receiving same, we established your own private file in this contest, and throughout the contest, as we receive your solutions, we will place them in your file.

You will find enclosed with this letter a Bulletin which contains the 1st, 2nd, 3rd, 4th, 5th, and 6th Week's Series of Puzzles.

Now, with the enclosed Bulletin, you have the puzzles for the first 6 weeks. Solve these puzzles. Submit your answers in accordance with the rules. The additional puzzles will be mailed to you in due course so that you will have ample time to solve them and to submit your solutions in accordance with the dates specified in the rules.

In acknowledging your solutions, we wish to extend to you a cordial welcome in this contest. We would like for you to know that every detail is under the direction of the same newspaper contest organization that has conducted the important contests for most of the nation's largest newspapers. At all times you may be certain that your solutions will be carefully safeguarded.

You can win $10,000 Cash First Prize in this contest, or any one of 99 other cash prizes. If you prefer, you can, of course, take any prize you win, in full or in part, in Defense Bonds. For instance, the $10,000 Cash Prize would be equivalent to Defense Bonds worth more than $13,000 at maturity.

We urge you to participate in this contest with enthusiasm and confidence. You can look forward to delightfully challenging puzzles created by expert puzzle-makers, and you may have absolute confidence that every contestant will receive the identical, fair impartial treatment.

As you probably know, it is permissible to send in more than one Series of solutions at a time if you wish to do so. In other words, if you wish to send several Series at a time, in the same envelope, the rules permit you to do so.

With every good wish for your success, consistent with fairness to all contestants, and looking forward to the receipt of your further solutions, we remain

Most sincerely yours,

THE ALL-AMERICAN CONTEST,
By M. A. McKAY,
Contest Editor.

MAM:s.

164 *Government's Exhibit 2–F*

THE ALL-AMERICAN PUZZLE CONTEST

Under Direction of Publishers Service Company, Inc., 75 West Street, New York, N. Y.

Office of Contest Editor.
Address All Communications to Puzzle Contest Editor, All-American Contest, P. O. Box 88 Trinity Station, New York, N. Y.

JANUARY 5, 1943.

We take pleasure in advising you that the 120 solutions you submitted in the contest have been adjudged correct in their entirety. As a result you are tied for the largest prize that can be awarded in the contest, $10,000.

In receiving congratulations you will be interested in knowing that more than one-half of those who started in the contest lost out or dropped out by the eighth week, and that more than 24,000 contestants from that point on lost out either by submitting one or more incorrect solutions or by dropping out of the contest entirely. The puzzles which proved most difficult were Nos. 17, 41, 60, 66, and 71, although practically all of the 120 puzzles were incorrectly named by many contestants during the course of the contest.

Ties will be broken and winners determined as fast as possible in accordance with the rules of the contest. You will receive a tie-breaking group of puzzles within the next few days. We call

OFFICIAL NOTICE:

You Are Tied for a Prize in the All-American Puzzle Contest

IMPORTANT:

Read the Following Instructions Carefully

REGULATIONS GOVERNING SUBMISSION OF SOLUTIONS TO THESE TIE-BREAKING PUZZLES

(1) As explained in the letter previously mailed to you under separate cover, this tie-breaking set of puzzles is sent to you for solution because you are tied for a prize.

(2) This is in accordance with Official Rules of the contest, Rule 6 of which states: *"In case of ties, if two or more persons tie in submitting the correct solutions to the first group of puzzles, then the first two or more prizes will be reserved for those contestants and the prizes will be awarded in the order of the accuracy of the submissions of those contestants to a first, and if necessary a second tie-breaking group of puzzles divided in series exactly like the first group."*

(3) In accordance with the above, the tie-breaking puzzles inside this folder are divided into twenty series of six puzzles each, as were the original group of puzzles. In order to expedite the determining of winners, and the payment of prizes, you are asked to submit your solutions in three groups of six or more series at a time, in accordance with the dates specified below:—

Send in your solutions to Series No. 1 through No. 6 not later than midnight, Saturday, January 9, 1943.

Send in your solutions to Series No. 7 through No. 12 not later than midnight, Saturday, January 16, 1943.

Send in your solutions to Series No. 13 through No. 20 not later than midnight, Saturday, January 23, 1943.

If you wish, you may submit your solutions earlier than the dates specified above, but you are asked to mail the solutions to at least the first 6 series not later than midnight, Saturday, January 9.

(4) Each series must be accompanied by 15 cents in coin as required in the Official Rules of the contest, Rule No. 7 of which provides that, in return for such remittances you will receive a second book, entirely different in contents from the other book which you are going to receive in return for the remittances you sent in with your solutions to the first group of puzzles.

(5) While neatness does not count in this contest, kindly cooperate by filling in your solutions as legibly as possible. Be sure to fill in your solutions in the correct spaces alongside the corresponding numbers provided on the Answer Form for each series. Be sure, too, that your name and address are plainly printed or written on each of the Answer Forms and also in the upper left corner of the envelope you use to send in your tie-breaking solutions.

Copyright 1942

HOW TO SEND IN YOUR SOLUTIONS

In view of the extreme importance of your tie-breaking solutions and the deadlines for mailing same, please be sure to address your envelope accurately. Address your envelope to:

Contest Editor
All-American Puzzle Contest
P. O. Box 66, Trinity Station
New York, N. Y.

Please print your own name and address in the upper left corner of your envelope.

In order to expedite the announcement of winners and payment of prizes, the following three Deadlines have been established for mailing in solutions to these tie-breaking puzzles:

Submit solutions to Series 1 through Series 6 not later than midnight, Saturday, January 9.

Submit solutions to Series 7 through Series 12 not later than midnight, Saturday, January 16.

Submit solutions to Series 13 through Series 20 not later than midnight, Saturday, January 23.

You may submit solutions earlier than the dates specified if you wish, but it is necessary that your solutions to at least the first 6 series be mailed not later than midnight, Saturday, January 9.

In accordance with the rules of the contest, 15 cents in coin must be enclosed with each series of six puzzle solutions, in return for which you will receive a special book entirely different in contents from the other volumes you are to receive for the miscellaneous puzzles submitted with your solutions for the original group of puzzles. Thus, you will receive two books. In accordance with the rules, the books will be distributed at the conclusion of the contest when winners are announced and prizes awarded.

You may write or print your solutions in pencil, pen and ink or any ink you choose. Be sure your solutions are LEGIBLE, clearly written or printed, and USE ONLY THE OFFICIAL ANSWER FORMS IN THIS TIE-BREAKING FOLDER for sending in your tie-breaking solutions. Before sealing your envelope be certain that the remittance as called for under the rules are enclosed and THAT YOUR NAME AND ADDRESS ARE CLEARLY WRITTEN OR PRINTED ON EACH OF THE ANSWER FORMS.

POSITIVELY NO CHANGES OR SUBSTITUTIONS OF SOLUTIONS CAN BE MADE ONCE YOUR TIE-BREAKING SOLUTIONS HAVE BEEN RECEIVED BY US.

THE FOLLOWING INFORMATION WITH REGARD TO CONSTRUCTION OF THE PUZZLES IS SUPPLIED TO CONTESTANTS ELIGIBLE TO SOLVE TIE-BREAKING PUZZLES

1. Arriving at the correct solution to these puzzles is purely a matter of skill. There is only one correct solution to each puzzle.

2. Each one of the objects pictured has a name—a DEFINITE name. That name is composed of only one word. That word, which is the name of the object pictured, is a single, unhyphenated word. This is clearly illustrated in the next paragraph.

3. The name of each and every object pictured is, as pointed out, ONE SINGLE WORD. For example: An object would be called a ROCKER, not a ROCKING CHAIR; a TRAY, not a SERVING TRAY. In other words, no compound terms, consisting of two or more separate words, have been employed. No hyphenated words have been used.

4. In solving these puzzles, you should maintain the exact order of the letters in the words as you write them down. If you have named all the objects correctly, the letters you have left after adding and subtracting should yield the correct solution.

5. Weights and measures are represented by stating the equivalent representation of such weight or measure.

6. Mythological characters are represented by their classical mythological representation.

7. The names of trees, flowers, etc., are represented by showing a typical part of such a plant, such as the leaves of the plant, the flower of the plant, the form of the tree, etc.

8. Names of coins are represented by picturing the equivalent value on an artificial representation of a coin. No attempt is made to reproduce the size or thickness of the coin itself.

9. Names of heraldic designs are represented by placing such designs within a conventional shield.

10. Words which are not both as compound terms or hyphenated words in Webster's New International Dictionary, 2nd Edition, have not been employed.

11. Where symbols have been employed to represent a word, such symbols are specifically illustrated. Such symbols may represent a word in musical notation, an idea in mathematics, a mark in electrical notation, in proofreading, etc., etc.

12. The names of geographical entities, such as countries, States, etc., are indicated by maps. In such a map, the capital of the State or country is indicated by a star.

13. To verify the correct name of an object pictured, you can consult the definition given in Webster's New International Dictionary, 2nd Edition, or compare with any other books at your disposal for both the definition and the illustration.

14. Do not be discouraged if you fail to solve one or more of these puzzles, for remember, they are intended to be tie-breaking puzzles. There is always the possibility that somebody else may solve the same puzzle or more puzzles than you solved. You can still win the higher prize if you have the higher total score, no matter how many puzzles you may have solved. Neatness will not be a factor in determining the winners, nor will trivial errors or inadvertent mistakes in spelling count against the contestant if in the opinion of the judges the contestant has arrived at the correct solution of the puzzle.

your particular attention to the fact that in order that you may have approximately the same amount of time to solve the puzzles as any other tying contestant, the dates printed on the tie-breaking folder you will receive should be extended by three days. The exact dates will be specified in a memorandum included with your tie-breaking puzzles.

With all good wishes, and again congratulating you, we remain

Very truly yours,

ALL-AMERICAN CONTEST,
By MALLIE MCKAY,
Contest Editor.

MM:H.

165 [Photostat.]

166 [Photostat.]

167 *Government's Exhibit 2–G*

THE ALL-AMERICAN PUZZLE CONTEST

Under Direction of Publishers Service Company, Inc., 75 West Street, New York, N. Y.

Office of Contest Editor.
Address All Communications to Puzzle Contest Editor, All-American Contest, P. O. Box 88 Trinity Station, New York, N. Y.

FEBRUARY 17, 1943.

Please be advised that you have been credited with 120 correct solutions to the first group of tie-breaking puzzles, giving you a total score in the contest of 240. You still remain tied for the highest prize that can be won in the contest.

In order to determine the winners as provided by the rules, I am forwarding to you under separate cover today:

(A) The final group of tie-breaking puzzles.

(B) An Affidavit form which certifies that you did not buy, sell or exchange answers in this contest and that you are not entered in the contest as an agent or proxy for any other person. You are asked to sign this Affidavit and have your signature witnessed. Please take note: This Affidavit Does Not Mean that you have already won. The winners can not possibly be determined until after the final tie-breaking puzzles, Affidavits, and letters are received.

(C) A Special Letter Form. You are to use this form in submitting the letter as required by the rules. The letter will only be considered in event ties exist on the final tie-breaker.

You will find complete details and dates for sending in your answers included with the tie-breaking puzzles which are being sent to you under separate cover. With every good wish for your success consistent with fairness to those with whom you are tied, believe us,

Most sincerely yours,

ALL-AMERICAN CONTEST,
By MALLIE MCKAY,
Contest Editor.

168 SPECIAL LETTER FORM

In the space below, please fill in your own original letter of not more than 200 words on the subject:

"My Choice for American Hero No. 1"

This letter must be sent in with your solutions to Series 13 through 20, and is required under the rules of the contest. Only in case ties still exist after all tie-breaking solutions have been checked will the letters be considered, and in that event they will be judged on the basis of originality in description and general interest. You can use typewriter or write by hand.

Be Sure to Fill in Name and Address in Space Below

Contestant's Name _____
Address _____
City _____ State _____

169 Enclose this Affidavit when sending in your solutions to the first 6 Series (No. 1 through No. 6 inclusive) to the final tie-breaking group of puzzles, not later than Midnight, February 27, 1943.

AFFIDAVIT

Date _____

To Whom It May Concern:

I, the undersigned, hereby affirm that the puzzle solutions I have submitted in the All-American Puzzle Contest represent my own individual effort, and that said solutions were not supplied to me by any outside source, nor were they obtained by me through purchase or exchange. I further certify that I am not entered in this contest as an agent or as a proxy for any other person or persons and that I am not under any obligation, written or oral, legal or moral, to turn over the amount of any prize, or any portion of same, to any person or group of persons who have supplied either

The All-American Puzzle Contest

FINAL TIE-BREAKING PUZZLES

GENERAL INSTRUCTIONS

Be Sure To Read Carefully

REGULATIONS GOVERNING THE SUBMISSION OF SOLUTIONS TO THESE FINAL TIE-BREAKING PUZZLES

(1) As explained in the accompanying letter, this FINAL TIE-BREAKING GROUP OF PUZZLES is sent to you for solution in order to determine winners of the Contest because the ties still remain.

(2) This is in accordance with the Official Rules of the contest, Rule Six of which states:

"In case of ties, if two or more persons tie in submitting the correct solutions to the first group of puzzles, then the first two or more prizes will be reserved for these contestants and the prizes will be awarded in the order of accuracy of the submissions of these contestants to a first, and if necessary, a second tie-breaking group of puzzles divided in series exactly like the first group. . . In case a second tie-breaking group of puzzles is necessary, contestants eligible to solve same will be required to accompany their solutions to this second tie-breaking group of puzzles with a letter of not more than 200 words on the subject: 'My Choice for American Hero No. 1.'"

(3) In accordance with the above, the puzzles in this FINAL GROUP OF THE TIE-BREAKING PUZZLES are divided into twenty Series of six puzzles each, as were the original group of puzzles and first tie-breaking group. In order to expedite the final tie-breaking period and determine the winners as promptly as possible, you are asked to submit your solutions to this final group of puzzles in three groups of six or more Series at a time, in accordance with the dates specified below:

Send in your solutions to Series No. 1 through Series No. 6 not later than midnight, Saturday, February 27, 1943, or earlier if possible.

Send in your solutions to Series No. 7 through Series No. 12 not later than midnight, Saturday, March 6, 1943, or earlier if possible.

Send in your solutions to Series No. 13 through Series No. 20 not later than midnight, Saturday, March 13, or earlier if possible.

Three envelopes are enclosed for mailing your solutions.

(4) In sending in your solutions to Series No. 1 through Series No. 6 you are asked to accompany these 6 series with the Affidavit enclosed, properly signed and witnessed. This Affidavit need not be stamped by a Notary Public at this time. These first six Series with the Affidavit enclosed should be mailed not later than Saturday, February 27th, and earlier if possible.

(5) Solutions to Series No. 7 through Series No. 12 should be mailed not later than Saturday, March 6th, and earlier if possible.

(6) Your solutions to Series No. 13 through Series No. 20 must be accompanied by a letter of not more than 200 words on the subject: "My Choice for American Hero No. 1." The Special Letter Form on which you are to write the letter is enclosed herewith. Mail Series No. 13 through Series No. 20, with letter enclosed, not later than March 13th, or earlier if possible.

(7) With each Series of six puzzle solutions, enclose 10 cents in coin in accordance with the rules, in return for which, as provided by the rules, you will receive a third book entirely different in contents from the other two books which you are going to receive in return for the postmoneys you sent in with your solutions to the first two groups of puzzles.

(8) White enclosure will not count in this contest, kindly cooperate by filling in your solutions as legibly as possible. Be sure to write in your answers in the correct spaces alongside the corresponding numbers provided on the Answer Form for each Series. Be sure, too, that your name and address are plainly printed on each of the Answer Forms as well as on the Special Letter Form. Also be sure to print your name and address in the upper left corner of each envelope in which you enclose your solutions.

(9) Do not be discouraged if you fail to solve one or more of the puzzles, for remember, they are intended to be tie-breaking puzzles also. There is always the possibility that somebody else may miss the same puzzle or more puzzles than you missed.

HOW TO SEND IN YOUR SOLUTIONS

Please note that three envelopes are enclosed, in which you are asked to send in your solutions to the FINAL TIE-BREAKING PUZZLES in this folder.

These three envelopes are provided for sending in your solutions to the 20 series in three parts, as follows:

Solutions to Series 1 through Series 6 are to be submitted not later than midnight, Saturday, February 27th.

Solutions to Series 7 through Series 12 are to be submitted not later than midnight, Saturday, March 6th.

Solutions to Series 13 through Series 20 are to be submitted not later than midnight, Saturday, March 13th.

Series No. 1 through Series No. 6 should be accompanied by the Affidavit enclosed, properly signed by yourself and one witness. This Affidavit need not be attested by a notary public at this time. Mail it in the envelope with Series No. 1 through Series No. 6 not later than midnight, February 27th.

PLEASE remember, this Affidavit means that you are SWEARING to win, that a check, MONEY ORDER or CASH prize, should the Affidavit Committee, Wilmington GAS HOUSE Inc. [illegible] with after the final tie-breaking solutions, affidavits and letters are checked.

Series No. 7 through Series No. 12 should be mailed not later than midnight, March 6th.

Series No. 13 through Series No. 20 should be mailed not later than midnight, Saturday, March 13th, and should be accompanied by a letter of not more than 200 words on the subject: "My Choice for American Hero No. 1." This letter, in accordance with the rules, will be taken into consideration only AFTER the solutions to these final tie-breaking puzzles have been checked, and only in the event that ties still exist at that time.

In accordance with the rules of the contest, enclose 10 cents in coin with each [illegible] of six puzzle solutions, remaining rules to [illegible] in return for which, as provided by the rules, you will receive a third book entirely different in contents from the other books you will receive.

Regarding the Letter You Are Required to Send in With Series 13 Through 20

Note the Special Letter Form enclosed. On this Special Letter Form write a letter of not more than 200 words on the subject: "My Choice for American Hero No. 1." This letter must be sent in with your solutions to Series No. 13 through Series No. 20 and must be mailed not later than March 13th.

This letter is required under the official rules of the contest and will be taken into consideration ONLY in case ties still exist AFTER solutions to this final tie-breaking group of puzzles have been checked.

We urge you to give this letter the same careful attention that you have given to the solution of the puzzles. Remember that this letter may be the final basis for determining the winners, in accordance with the rules, if ties still exist after the solutions to these final tie-breaking puzzles have been checked.

In that case, the letters will be judged on the basis of originality in description and general interest.

Remember, your letter should contain not more than 200 words. It should be written, either by typewriter or by hand, on the Special Letter Form enclosed herewith.

If necessary to consider the letters in determining winners, letters will be photostated without the name of the contestant and will be given only an identifying number, so that the identity of the contestant who wrote the letter will not be known to the judges of the letters.

This will be done in order to assure absolute impartiality and to maintain the same standards of fairness that have been exercised throughout this contest.

IMPORTANT: *We Have Enclosed With This Bulletin:*

(1) Three envelopes—one in which to send in your solutions to Series No. 1 through Series No. 6; another in which to send in your solutions to Series No. 7 through Series No. 12; and a third in which to send in your Solutions to Series No. 13 through Series No. 20.

(2) An Affidavit Form to be signed and enclosed with your solutions to Series No. 1 through Series No. 6, and mailed not later than midnight, February 27th, and earlier if possible.

(3) A Special Letter Form on which you are required to write a letter of not more than 200 words on the subject: "My Choice for American Hero No. 1," this form to be sent in with your solutions to Series No. 13 through No. 20, not later than midnight, March 13th, and earlier if possible.

advice or assistance in solving the puzzles or in writing the Special Letter as called for under the Rules. In the event I am awarded a prize I am willing to sign this Affidavit under oath, prior to receiving my check.

Signature of Contestant _____
Address _____
City _____ State _____
Witnessed by _____

170 [Photostat.]

171 *Government's Exhibit 2–H*

THE ALL-AMERICAN PUZZLE CONTEST

Under Direction of Publishers Service Company, Inc., 75 West Street, New York, N. Y.

Office of Contest Editor.
Address All Communications to Puzzle Contest Editor, All-American Contest, P. O. Box 88 Trinity Station, New York N. Y.

APRIL 16, 1943.

You would be conferring a great favor upon me if you could help me in disposing of some more of the books. In this connection it occurs to me that the enclosed descriptive circular about the books would be of considerable interest to you.

As you will note from the enclosed, these books have been designed for permanency, with the thought that they would remain in home libraries for generations to come, reflecting an intensely accurate history of our generation and the problems and interests of the people of our time.

No matter how large a prize you may win in this contest, and it is entirely possible that you may win as much as $20,000, it would seem to me that surely a large portion of your pride would come from the knowledge that through this contest you rendered valuable help in the successful distribution of an important literary work of enduring quality based on America and on the cultural and the fundamental interests of the American people.

Unquestionably, these sets of books will make most desirable gifts. In expressing the hope that perhaps you could help me dispose of one or more sets, it would seem that you could use them advantageously as birthday, anniversary or Christmas gifts. With reference to sending these sets to men in the armed services, surely few volumes would be more appropriate or more desired than the human, homely, interesting stories contained in the volumes of THIS IS YOUR AMERICA.

Most sincerely I hope you can find use for another set of the volumes.

172 If there is any way that you can see your way clear to make use of another set of the books for gift purposes, please be assured that your co-operation would be most deeply appreciated by me. Your purchase will represent to me your realization that I have succeeded in conducting a fair, equitable, efficient contest in which every entry was afforded the same, impartial, accurate handling, where every entry was given the same opportunity to win, and a contest in which the contestants themselves co-operated liberally and voluntarily in their effort to make the contest a fine success from the standpoint of the sponsor.

Naturally, if I could tell you that you were going to win $20,000, or $4,000, or $2,000, or almost any of the larger prizes, I am sure that you would be only too glad to purchase many sets of the volumes. But I cannot make any such statement to you. The winners are not yet determined and I do not know who the winners will be.

It is entirely possible that you may win $20,000, because it is absolutely certain that either you or one of the other persons with whom you are tied must be designated as the winner of the First Prize in this contest. However, under no circumstances would we permit any contestant to purchase books under the impression that the purchase would cause the contestant to win the $20,000 prize or any other prize for that matter.

In my previous letter I told you that I could offer you no inducement, prize or otherwise, for helping me dispose of one or more sets. I trust you realize the spirit in which this is written. Most earnestly we seek your interest in the sale of our books, but just as earnestly we want every contestant to know that the winning of the prizes is not in any way dependent upon the purchase of more books.

However, we do intend to reward the two entrants who help us dispose of the most sets by April 21st, by giving each of those two entrants a set of the latest edition of the complete Encyclopedia Britannica regardless of any cash prize won in the contest by these two entrants. We want to make these gifts entirely aside from the contest. We want to make these two gifts purely as a gesture of appreciation to the two conestants who might, without any selfish motive, and fully realizing that their efforts would not influence their winning of a prize in the contest, decide to try seriously to help us in selling our books.

For your convenience, I will provide spaces for an order form on the third page of this letter below the signature, and you
173 can use the third page of this letter for ordering books and specifying shipping addresses. In case you have already sent in an order on the form previously sent to you, you will not need this form. However, if you did not order any books previously but wish to do so now, in view of the added information you have about the books, this form will be convenient. The special reduced price for contestants applies to this offer. Any check or money order enclosed should be made payable to All-American contest. Please mail same on or before Midnight April 21st, enclosing same in the enclosed self-addressed envelope. This envelope will be given preferred attention in the handling of our mail.

Looking forward with pleasure to your reply on or before April 21st, and trusting that the outcome of the contest will meet with your fond expectations, consistent with fairness to one and all, believe me

Most sincerely yours,

ALL-AMERICAN CONTEST,
By MOLLIE MCKAY,
Contest Editor.

MAM: h.

ORDER FORM FOR BOOKS

I enclose herewith $------, as one-third payment for ------ set(s) of the three-volume work This Is Your America, at the Rate of $7.50 per set. I will send the balance in two weekly payments of $------ each. (In case you wish to pay in full, please fill in here): I attach $------ as full payment for ------ set(s) of the three-volume work This Is Your America, at the Rate of $7.50 per set. If check or money order is attached, same should be made payable to All-American Contest.

Name Address City State

Contestant's name----------

Address ----------

City, State----------

This Order Form Should Be Mailed on or Before Midnight April 21st.

174 *Government's Exhibit 2-I*

PUBLISHERS SERVICE COMPANY, INCORPORATED
75 WEST STREET
Telephone Whitehall 4-6626

NEW YORK, N. Y., *April 23rd, 1943.*

Address reply to All-American Contest, M. A. McKay, Contest Editor.

We notified you yesterday that qualified contestants would be forwarded Forms on which to indicate their choice of War Bonds or cash, or the proportion of each desired.

At the time this letter is written the judging is still in progress. Therefore, the request for this information regarding cash or War Bonds is not to be taken as notification that you have already won because the winners are not yet determined. On the other hand, it is entirely possible that you will be awarded the $20,000 First Prize because it is inevitable that either you or one of the persons tied with you must be designated as the winner of First Prize in this contest.

If you are awarded the First Prize, you will be entitled to receive $20,000 in cash. If you wanted the entire prize paid in Series F War Bonds, the cash investment would be $19,998.50, and the maturity value of the bonds would be $27,025.00. For example, if the winner of First Prize decided to have about half of the prize paid in cash and the other half to be paid in War Bonds, the winner could receive $10,010.00 in Cash in addition to War Bonds with a maturity value of $13,500.00. As you probably know, Series F War Bonds have maturity value in excess of one-third more than their cash value at time of purchase.

The sponsors of this contest do not gain any financial benefit irrespective of whether the winners choose to have their prizes paid all in War Bonds, or all in Cash, or part War Bonds and part cash. Naturally, in case the winners of the larger prizes took a substantial part of their prizes in War Bonds, we would publicize
175 that fact in the announcement of the winners. Also, like all good Americans placed in our position, we want to do everything possible within the spirit of our contest rules to encourage the purchase of War Bonds.

Please understand, however, that your decision as to what amount of Bonds you would want, if you would wish any at all, will not in the slightest way whatsoever affect the selection of your entry as a winner. The names and addresses of the contestants have not been included on the photostats of submissions from which the winners are being determined. Nor have the judges

any way of knowing the choice of the winning entrants as to the matter of War Bonds or cash.

We are enclosing the authorization Form herewith. Please note that your signature is required at the top and bottom in addition to the spaces for indication as to War Bonds and Cash. Please fill in and return the Form to us not later than Midnight of April 27th. Mail same in the enclosed self-addressed envelope in order that it may receive preferred attention in the sorting of the large amount of mail this company receives.

There is one matter I would like to ask you about, and, again, this has nothing whatever to do with your selection as the $20,000 winner or the winner of any other prize. What I would like to ask you is whether or not there is any way you might help me dispose of some more of our books. There is no inducement, prize or otherwise, that I can offer you in return for this favor. All I can offer is our gratitude to you for helping to make this contest a success from the standpoint of selling the books. I feel sure that you could make excellent use of the books as gifts, and that they would be highly regarded by their recipients. They should be ideal as gifts for men in the armed service.

In any event, if you can find some way to help me in the matter of the books, won't you please do so, using the lower spaces provided on the Form. Most sincerely will I personally appreciate your cooperation in this matter.

Thanking you in advance for your cooperation, and asking that you fill in and mail your instructions in the enclosed envelope before Midnight of April 27th, believe me with all good wishes,

Most sincerely yours,

ALL-AMERICAN CONTEST,
By MOLLIE MCKAY,
Contest Editor.

MAM:H.

176 *Government's Exhibit 2-K-3*

Over a period of many years, it has been the policy of contest sponsors not to reveal, except in a general way, the number of persons who enter any given contest or the number of contestants who either finish the contest or participate in any form of final tie-breaking. On the other hand, it is the standard policy with this company to publish in the announcement of winners the exact number of puzzles correctly solved by each winning contestant, together with the correct solutions for all of the puzzles used in the contest, tie-breaking puzzles as well as the original puzzles, and also the name and address of all winners. We likewise wish to point out that the files of all winners are available to any contestant at the conclusion of the contest, winners and losers alike.

We do not want to encourage any contestant to take part in the tie-breaking phase of the contest if that contestant is under the impression only a very few contestants are tied and that every contestant who is tied is certain to win a prize.

177 [Photostat.]

178 *Goverment's Exhibit 3*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.

We have received your Group of 80 Solutions in our contest and wish to congratulate you upon your promptness in sending your solutions to the 80 puzzles. At the same time, however, may we point out that the final Series need not have been submitted until midnight of June 16th, as provided by the rules, and therefore, no announcements as to the result of the contest can be made until after that date.

We mention the above in order that you may understand that even though you submitted the 80 solutions far in advance of the required deadline, there is no way in which the contest can be speeded up, because the rules establish June 16th as the deadline and we must adhere to the rules.

We would also like to point out that the rules of the contest specify that the contestants will receive, in return for their remittances, the July selection of the book club. Therefore, we trust you will understand that you will not receive the book until that month.

We hope you will enjoy this contest and that, consistent with fairness to all contestants, you will realize your fond expectations. However, in view of the fact that your solutions were sent in so far ahead of the final deadline, we thought it advisable to make it clear to you that the contest does not close until June 16th, and that the book will not be delivered until July.

Announcement of Winners

ALL-AMERICAN CONTEST

Advertised and Conducted by Publishers' Service Co., Inc., 75 West Street, New York, N.Y.

1st Prize . . $10,000

Won by . . .

MABEL D. ABRAMSON

2906 Columbus Ave., Minneapolis, Minn.

Won by . . .

ELLA CHURCHILL WARREN

2405 Glenmary Avenue, Louisville, Ky.

It was the final decision of the judges that the contestants named above submitted tie-breaking letters of equal merit and that each was entitled to the First Prize. The full amount of the prize won was awarded to each of the above winners.

2nd Prize . . $2,000

Won by . . .

ALMA LEE DYER

Route One, Hermiston, Oregon

3rd Prize . . $1,000

Won by . . .

PAUL P. ZACHARY

1117 Kalghn Avenue, Camden, New Jersey

4th Prize . $500

MRS. E. J. BOGERT

226 Bailey St., New Cumberland, Pa.

5th Prize . $250

H. G. WEST

603 Woodland Drive, Greensboro, N.C.

6th Prize . $250

HENRY G. WENZEL, JR.

115-01 85th Ave., Richmond Hill, N. Y.

7th Prize . $250

EMILIE H. PONNIAC

1977 King's Highway, Fairfield, Conn.

8th Prize . $100

KENNETH E. BROWN

1219 W. Water St., Elmira, New York

9th Prize . $100

MRS. CHARLES C. WADE

6323 Harding Ave., Saleaville, Ohio

10th Prize . $100

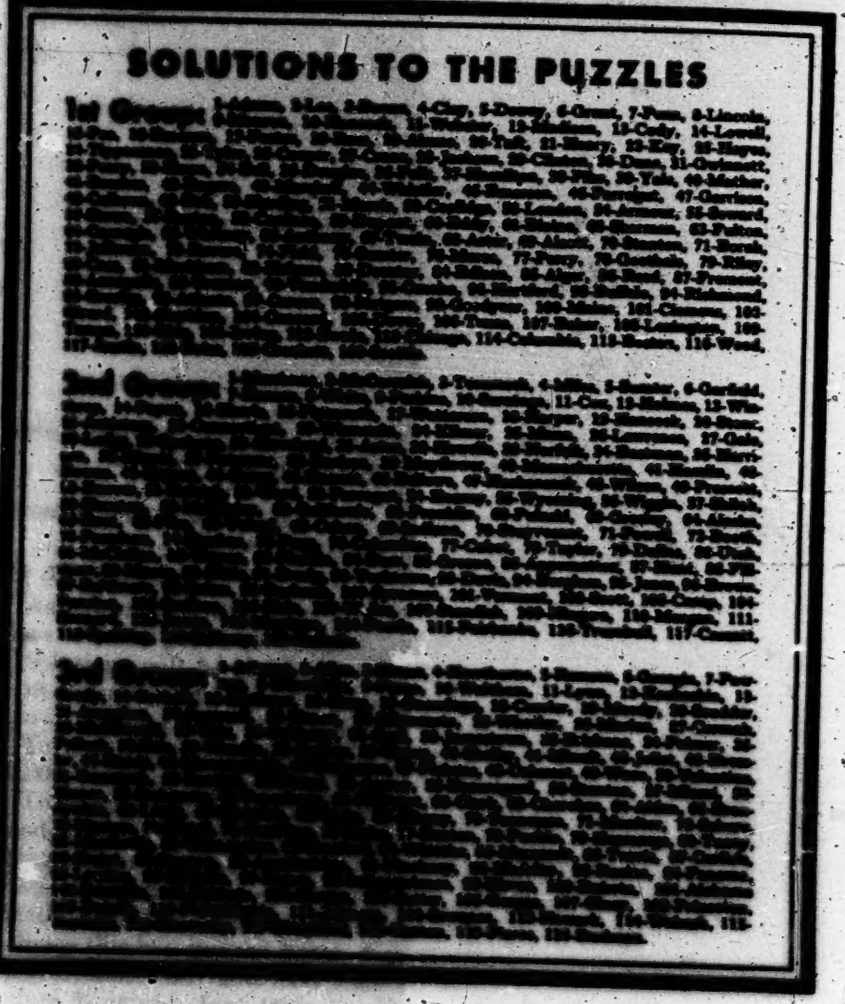
JAMES J. PALFY

2191 West 28th St., Cleveland, Ohio

WINNERS OF 11th to 100th PRIZES:

[illegible], Box 1035, 1104 So. Perry St., Montgomery, Ala.; Bonnie Hoffman, 888 S. 49th St., Brooklyn, N. Y.; Mrs. J. V. Haldeen, 211 No. Germantown Rd., Chattanooga, Tenn.; Vernon T. Houghton, 160-15 7th Ave., Beechhurst, N. Y.; C. S. Hoffmann, 1820 Franklin Ave., Columbus, O.; F. H. Humphreys, 328 N. West End Ave., Lancaster, Pa.; Mrs. Vera Hutchison Smithton, S. D.; Mary Ann, 911 42nd Ave., So., Moorhead, Minn.; Mrs. Allen Jones, 209 N. Maple Ave., Whitesville, Ky.; Mrs. Roger Kittles, East Ave., Hopkins, N. Y.; E. G. Kinsley, c/o Sup. Ships., U. S. N., Newport News, Va.; Mrs. L. W. Klaus, Box 510, Mattituck, Long Island, N. Y.; Curtis A. Klinker, 1711 North East First Ave., Miami, Fla.; Cameron Otis Richardson, 227 Walnut St., Waterbury, Conn.; Willard Kreidt, R. F. D. No. 2, Louisville, O.; William R. Kreamer, 107 W. Cooper St., Athens, Penna.; Norman E. Landon, 2021 Indianola Ave., Indianapolis, Ind.; Goldie M. Lane, 1107 Ohio St., Apt. B., South Norfolk, Va.; Beaudine Leighton, Nottingham, N. H.; Mrs. Cly J. Lewis, Hogan Road, Brentwood, Tenn.; Robert C. MacCuish, 4015 Ogletheorpe St., Hyattsville, Md.; Mrs. Charles Mahon, 919 N. Avalon St., Memphis, Tenn.; Mrs. Norman Mansberg, 9726 So. Aberdeen, Chicago, Ill.; Miss Melanie, 44 Ramsey St., Springfield, Mass.; Norman A. Maggs, Box 226, Adams, Tenn.; Mrs. Mary G. Merritt, 17 Haynes St., Hartford, Conn.; Raymond H. Metzger, 123 St. Joseph Ave., Buffalo, N. Y.; Dorothy D. Michael, Box 104, Luzerville, Pa.; Elvena Lee Millier, Booneville, Ky.; Mrs. Earl C. Moore, 302 Center St., Winder, Ga.; Marshall Moore, Sunbury, Ky.; Mrs. A. T. Mixon, Box 262, Pageland, S. C.; Mrs. F. Murphy, 222 Webster St., Apt. No. 4, San Francisco, Calif.; Mrs. William E. McCoy, 1420 East Bobo St., Pensacola, Fla.; A. D. McLean, 1999 Court Ave., Memphis, Tenn.; Mrs. Leo A. Nikolai, 829 Fourth Ave., Madison, Minn.; Mrs. John L. O'Brien, 1680 E. 117th St., Cleveland, O.; Peter J. Peters, Box 122, South Bend, Tex.; C. C. Phillips, 326 South Allison Ave., Pittsburgh, Pa.; Mrs. J. N. Pinnell, 329 S. Main St., Somerset, Ky.; Mrs. Allen S. Porter, 703 Bitterroot North, Seattle, Wash.; Mrs. William W. Ramsey, c/o Wm. W. Ramsey, Radio Maintenance, Warner-Robins Army Air Depot, Warner-Robins, Ga.; Mrs. Vaughn Ballenger, 920 Homer Ave., Kansas City, Kans.; Margaret V. Riley, 548-52th St., Brooklyn, N. Y.; Wm. J. Schlichtmiller, 1239 Vandervoort Ave., Hamilton, O.; L. J. Schramm, 1213 W. Market St., Louisville, Ky.; G. E. Shaw, 1113 Eugene St., Indianapolis, Ind.; Mrs. Roger L. Shaltrey, 22 Miller Place, Lockport, N. Y.; Mrs. W. E. Stephens, House 409, Marin City, Calif.; Nelson Szeryniak, 6020 Yucca St., Hollywood, Calif.; Mary Lee Talbot, 1680 N. Heath Park Ave., Chicago, Ill.; Mrs. Norman E. Thrall, 28 Spring St., Manchester, Conn.; E. W. Tripp, 356 N. High St., Carrollton, O.; Mrs. George Trydahl, Box 138, Thompson, N. D.; James A. Vernon, 23 Romney Place, Cape May Court House, N. J.; Christine Walsh, 303-32nd Ave., So., Nashville, Tenn.; Mrs. E. L. Webster, 1001 Main St., Weirton, Iroquois, Va.; Edward Williams, Box 158, East Pittsburgh, O.; Mrs. H. H. Williams, Brookpark, Minn.

SOLUTIONS TO THE PUZZLES



As provided by the rules of the contest, two tie-breaking groups of puzzles and a letter on the subject "My Choice for American Hero No. 1" were required in order to determine the winners. The final awarding of prizes was based on the merit of the letters submitted in view of the perfect solutions to the second group of tie-breaking puzzles submitted by tying contestants. In other words, all winners submitted correct solutions to 360 puzzles, and in addition wrote what the judges considered the best letters.

To those contestants whose puzzle solutions were correct but whose letters failed to win, may we advise that the judges gave long, careful and impartial consideration to the letters. The actual letters were photostated, without the name and address of the contestant. Consequently, the judges did not know the identity of the writers.

The judging was under the direction of an independent organization, the same outstanding contest-judging company employed by most of the larger national advertisers for the purpose of judging their contests.

The organization, in its official letter advising of its selection of winners, writes as follows:

"We have judged hundreds of important contests, and are familiar with the handling of other contests which we have not judged. It is our opinion that no contest ever conducted, in which letters were the final basis of determining awards, has been conducted with more care, thoroughness and zeal in the final selection of winning letters."

The winners of the prizes have signed affidavits that their puzzle solutions and their letters represent the individual effort of those contestants and were submitted in accordance with the rules of the contest.

Distribution of the books to which contestants are entitled has been made as provided in the rules. Any person who has not received the books and who is entitled to same is requested to notify Publishers Service Company, Inc., 75 West Street, New York, N. Y.

The sponsors wish to thank all who participated and will be glad to answer any inquiries from contestants.

This Complete List of Winners, together with the correct solutions to all 360 puzzles, has been mailed to all participants in the contest. If for any reason you took part in the contest and did not receive this announcement of winners, please communicate at once with the sponsors, Publishers Service Company, Inc., 75 West Street, New York, N. Y.

PUBLISHERS SERVICE COMPANY, INC.
75 WEST STREET
NEW YORK, N. Y.

759707 O—47 (Face p. 96)

If this is not entirely clear and satisfactory to you kindly advise us at once, using the reverse side of this letter for your reply, in which event, we will, of course, return your solutions and remittances.

With all good wishes, we remain
Most cordially yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JSJ:ns20.

179 *Government's Exhibit 4*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.

Note Carefully: The Deadline for Sending Solutions to the 80 Puzzles is Midnight, Saturday, June 16, 1945

From JUDITH S. JOHNSON,
Contest Editor of Facts.

To All Contestants:

As you undoubtedly know, the deadline for sending in the solutions to the 80 puzzles is Midnight, June 16th.

Solutions will be checked as promptly as possible, consistent with accurate and efficient judging, and the results will be made known within two or three weeks following June 16th.

To you, this contest represents an opportunity to win $10,000, $2,000, $1,000 or any of 500 cash prizes.

To Facts, this contest represents an opportuntiy to win your good-will and friendship. To that end, Facts wants to do everything within its power. We shall continue to try throughout this contest to make this contest the finest, most interesting, most efficiently conducted of any contest you have ever entered.

Since this is a general letter, it naturally will be received both by contestants who still have some of the 80 solutions to send in before Midnight, June 16th, as well as by other contestants who have already mailed in all of their 80 answers.

With the June 16th deadline so close at hand, I would like to take this opportunity in behalf of the Editors of Facts, to express the hope that you have enjoyed this contest, and that, with fairness to one and all, you may realize your fond expectations.

May I emphasize what we said at the very beginning of the contest, namely: If You Are Entitled to win, You Shall Win! Be sure any of the remaining 80 solutions are mailed before the deadline, June 16th at Midnight, and send them in with absolute assurance that your entry will receive the most careful, accurate, considerate attention.

With every good wish for your success, consistent with fairness for one and all, and trusting that this contest will be the means of making you a life-long friend of Facts, I remain

Very sincerely yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

P. S.—For your convenience, we enclose all 80 puzzles, just in case you may need them, or in the event some one else may want to enter before Midnight, June 16th.

180 *Government's Exhibit 5*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.

From the CONTEST EDITOR of Facts Magazine.

DEAR FRIEND: We have received your entry in our contest and we send you herewith the complete Group of 80 puzzles.

You have already submitted your solutions to the 1st Series (Puzzles No. 1, 2, 3, 4). Therefore, continue on with the contest. Solve the next Series of puzzles, etc., and just continue to mail your solutions to the various Series of puzzles in accordance with the instructions printed with the puzzles.

Facts Magazine welcomes you into this contest and extends to you every good wish for your success consistent with fairness to every other entrant. We hope to make this contest the most efficiently and pleasantly conducted of any contest you have ever entered. To this end, we ask your kind cooperation.

Here is how you can help the Contest Department. First, please write or print your solution just as legibly and clearly as you can. Second, make sure that your name and address are clearly printed or written on each Answer Form that you submit.

The rules, details, sample puzzles and instructions are so clearly stated in the enclosed booklet which contains all of the 80 puzzles that it seems needless to repeat them here. As you will note in the booklet, it is permissible under the rules to mail your solutions to two or more Series in the same envelope if you wish to do so. It is possible that you may wish to mail your solutions to the 2nd and 3rd Series at the same time, or perhaps the 2nd, 3rd, and 4th Series at the same time. If you wish to do so, this is permissible under the rules. Please wrap coins in a small piece of paper before inserting in your envelope.

Continue to submit your solutions just as promptly as you can. This will make for the utmost efficiency in conducting the contest. Once more, accept this cordial welcome from Facts. From time to time, if news of importance develops, you can depend upon hearing from us. With all good wishes, we remain

Very truly yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JSJ : SV.

181 *Government's Exhibit 6*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.

From the CONTEST EDITOR of Facts Magazine to All of our Friends:

DEAR FRIEND: We have received your request for the 80 puzzles in our contest, and in reply we are pleased to mail same to you herewith.

We hope you will enjoy these puzzles, and that you will become an entrant in our contest. First Prize will be $10,000.

Whether you enter the contest or not, the puzzles are yours to do with as you please. It has been a pleasure for Facts Magazine to send them to you, and we are very glad to have the oppor-

tunity of getting acquainted. We are conducting this contest to win good-will, friends and readers, and to that end we will do everything possible to make this contest one of the most efficiently conducted that you have ever entered.

Please accept our cordial invitation to enter the contest. Try seriously to win. We assure you that your entry will receive the utmost consideration—the fair, impartial, accurate attention that every contest lover desires.

Let us assure you that you are under no obligation either now, or at any future time to buy Facts or to subscribe for same. That will have no bearing whatever on your winning a prize in our contest.

Now, as to participating in the contest, may we offer these suggestions, despite the fact that all of them are clearly outlined in the enclosed booklet which contains the 80 puzzles.

First: Study the Sample Puzzle and the method by which it was solved. Be sure you understand how the sample puzzle was solved before trying to solve the official puzzles of the contest. You will find the sample puzzles on the front page of the enclosed booklet, and also on page 2, as well as on the back page.

Second: Read the instructions and rules carefully. Be sure you understand how to proceed in the contest. Note particularly that you can include more than one series of solutions in the same envelope if you wish to do so. For instance, you may wish to send in your solutions to Series Nos. 1 and 2, or Series Nos. 1, 2, and 3 in the same envelope. If so, this is permissible.

182 As you will note when you study the instructions, you will be entitled to receive a book, the July selection of the Literary Classics Book Club, in return for the payment which the rules require with each Series of solutions. In sending in your solutions, please wrap your coins in a small piece of paper before enclosing in the envelope.

Begin with Series No. 1, which consists of Puzzles 1, 2, 3, 4. Solve these puzzles. Fill in your solutions on the Entry Form which you will find on Page 4 of the enclosed booklet. Address your envelope in accordance with the address on the top of the Entry Form, and enclose 15 cents in coin. The rules require this remittance for each Series.

Now that you have the 80 puzzles, together with all rules, details, etc., we hope you will enter the contest and give yourself an opportunity to win $10,000, $2,000, $1,000 or any of the 500 cash prizes that will be awarded.

We look forward with pleasure to receiving your entry, and again we wish to assure you same will be given our prompt and careful attention.

With all good wishes for your success in the contest, consistent with fairness for one and all, we beg to remain

Most cordially yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JSJ:bk.

183 *Government's Exhibit 7*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.

DEAR FRIEND: In a desire to provide all contestants with identical information, the Contest Editor of Facts Magazine has prepared a mimeographed set of standard replies for the answering of questions asked by contestants.

In preparing the answers, the various questions that have been asked by contestants have been compiled and an answer to each question follows the question itself.

The enclosed questions and answers will be our standard question and answer form that we will send to contestants sending in inquiries.

Perhaps you will find the exact question you have asked, almost verbatim, among the questions on the attached. If not, we believe that you may find a question so closely approximating your own question, that the answer to the question you asked in your letter will be clear.

We hope you will agree with us that this is the best method we can arrange for handling inquiries in such manner that no individual contestant who writes to us will be able to obtain any information that would give that contestant an advantage over any other contestant who happened to write in but did not ask the same question or did not phrase the question in the same way.

From time to time, this list of questions and answers may be enlarged. Inquiries will be answered throughout the contest by the

latest standardized question and answer form ready for distribution on the date on which the inquiry is received.

Sincerely yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JJ:af3.
encl.

184 *Government's Exhibit 7-A*

Question. I tore or in some other way lost one of the pages or puzzles in the bulletin of puzzles. Please send me another set of puzzles.

Answer. Enclosed is an additional booklet of the 80 puzzles.

Question. Is it permissible to send stamps instead of coin?

Answer. Yes, it is.

Question. I travel a great deal and may be late occasionally in submitting my solutions to you on a weekly basis. Will such lateness disqualify me?

Answer. No. As long as all your solutions to the 80 puzzles are mailed no later than June 16th, 1945, you will still be eligible to compete. However, to facilitate the filing and checking of solutions, please try to follow as closely as possible the weekly mailing dates for the submission of your solutions.

Question. Who will do the judging of this contest?

Answer. The Reuben H. Donnelley Company of New York.

Question. I expect to go into the Services shortly. Will that disqualify me from continuing in the contest?

Answer. No, that will not disqualify you.

Question. I believe one of the puzzles is incorrect. I cannot seem to get the solution.

Answer. Try solving it again. The puzzles were checked carefully and are correct as drawn.

Question. Is it necessary to show how I solved each puzzle when I submit my solution?

Answer. No. Just copy your solutions Carefully on to the Answer Forms. Please watch your spelling.

Question. Will you please send me the tie-breaking puzzles now so that I can solve them?

Answer. Puzzles must be checked before determining to whom tie-breakers should be sent. Tie-breakers will not be sent out until it has been determined that you are entitled to receive same by virtue of being tied with other contestants also entitled to receive the same tie-breaker.

Question. Does just the one name represented by the puzzle have to be written on the Answer Form, or do we have to write the full name of the person or object represented?

Answer. Just the name you actually arrive at as a result of solving the puzzle. In some cases, it may be the last name only. In other, it may be the full name.

Revised.

185 *Government's Exhibit 7–B*

Question. Where will the correct solutions and the names of the winners be announced?

Answer. The winners' names, as well as the correct solutions, will be published in Facts Magazine after the contest is closed and the submissions checked and judged.

Question. Is it necessary to enclose 15¢ with each Series of 4 puzzles, or is it 15¢ for the whole Group of 80 puzzles?

Answer. Please read Rule No. 8 of the Official Rules carefully. It states that each Series of 4 puzzles must be accompanied by 15¢. The Group of 80 puzzles consists of 20 Series, each of which must be accompanied by 15¢ in coin.

Question. If I solve all 80 puzzles correctly, will I get a prize?

Answer. If you are the only person in the contest to correctly solve all 80 of the puzzles, then and in that event you will automatically be entitled to the first prize. However, if other persons also correctly solve 80 puzzles and thereby become tied with you, then the procedure as to the breaking of ties and the determination of winners follow the provisions as set forth in Rule No. 9 of the Official Rules to which you are referred now.

Question. I enclose my solutions to the first 4 puzzles. Please write and tell me whether or not I solved them correctly before I send in the solutions to the rest of the puzzles.

Answer. The contest closes June 16th, 1945. We cannot tell you now whether your first 4 puzzle solutions are right or wrong since the Donnelley Company does not judge a contestant's solutions until all his 80 solutions are in.

Question. Is it proper for me to send you now my 200-word letter on the subject "The Puzzle I Found Most Interesting and Educational in This Contest?" I am enclosing it anyway.

Answer. No, and we return the letter to you herewith. Please read the rules carefully. The contest does not close until June 16th, 1945, and until the tie-breakers as provided in the rules are sent out and returnable, there is no occasion for sending in the 200-word letter.

Question. I expect to move during the next month or so. How will mail that you send me reach me?

Answer. Any mail we may send you will be addressed to the address you give us on your Answer Form. Therefore, please register your change of address with your Post Office.

186 *Government's Exhibit 7–C*

Question. Can members of the same family compete in this contest? May members of the U. S. Armed Forces compete?

Answer. Yes. This contest is open to everybody except employees and relatives of employees of Facts Magazine or any person or firm directly or indirectly employed in conducting the contest.

Question. Where should my puzzle solutions be sent—to Contest Editor, Box 324, Church Street Post Office Annex, New York, 8, N. Y., or to Contest Editor, 75 West Street, New York, 6, N. Y.?

Answer. Either of the above two addresses is correct.

Question. Can I send check or money order instead of coins, in order to qualify my solutions in accordance with Rule #8?

Answer. Yes. But if you send coins, please wrap in piece of paper before enclosing in envelope.

Question. If I receive the puzzles late, or if I should happen to skip a week or two in submitting my solutions to any particular Series of puzzles, will I be disqualified and not permitted to continue in the contest?

Answer. No. Should you be late in sending in any of the solutions to the 80 puzzles in accordance with the suggested submission dates printed in the puzzle bulletin, please remember you can bring yourself up to date in the contest simply by mailing in the previous weeks' Series of puzzle solutions along with the current series. In all events, you have until June 16th, 1945 as provided in the rules to submit your solutions to all 80 puzzles. Naturally, it will greatly facilitate filing and judging if you submit your answers in accordance with the suggested submission dates as printed on the puzzles.

Question. Can I send in my solutions all at one time to all the remaining puzzles as issued instead of waiting to submit them in accordance with the dates specified?

Answer. Yes.

Question. Can I send payment for the entire Group of 80 puzzles along with my solutions to the first or second or third Series, instead of enclosing coins with each week's solutions?

Answer. Yes. Provided, however, that with your solutions to each of the following Series of puzzles, you are sure to enclose a note stating the date and amount of your previous remittance.

Question. When do I receive the book in return for my qualifying remittances?

Answer. Contestants who submit a complete Group of solutions qualified in accordance with the rules of the contest will receive the book selected for the month of July 1945 by the Literary Classics Book Club. You should receive the book late in July or during the early part of August. Entrants who for any reason drop out of the contest before sending in the entire Group of 80 solutions will receive, after the prizes are awarded, a set of "Quotations by Famous Statesmen."

187 *Government's Exhibit 7-D*

Question. Can I change or alter any of my solutions once I have submitted them?

Answer. No. In fairness to all contestants, once you have sent us your Answer Forms containing your solutions, no changes or alterations can be made.

Question. Will it be necessary for me to buy the magazine or to subscribe for it in order to compete in the contest?

Answer. No. You are under no obligation now, or at any future time, to buy the magazine or to subscribe for it. Please read the rules of the contest carefully.

Question. What do I receive in return for my remittances which are to accompany the puzzle solutions in accordance with the rules?

Answer. Please read the rules carefully. Rule #8 provides that "each contestant who submits a complete Group of solutions for this contest qualified in accordance with the Rules will receive the book selected for the month of July by the Literary Classics Book Club. Any contestant who becomes eligible to submit, and who does submit, a Group of qualified tie-breaking solutions, will receive the following month's Book Club selection. Entrants who for any reason drop out of the contest before sending in the Group of 80 solutions will receive a set of 'Quotations by Famous Statesmen.'"

Question. Will you please send me an acknowledgment of having received my solutions and remittances as I mail them to you weekly with my remittances?

Answer. The only way we can acknowledge receipt of your solutions is if you specifically request a receipt each time you send in your solutions and enclose a self-addressed stamped envelope. We will then mail you a copy of this sheet which will serve as an acknowledgment.

Question. If I accidentally wrote my solutions for a Series of puzzles horizontally across the answer form instead of vertically on the 4 lines but nevertheless got all 4 of them correct, will this be held against me?

Answer. No.

Question. I just happened to come across the announcement of your contest and am wondering if I am too late to enter and compete at this time. How can I enter and bring myself up to date?

Answer. It is not too late to enter the contest now since the rules provide that you may send in your final Series of solutions to the 80 puzzles comprising the Group of puzzles any time before June 16th, 1945. Simply send in your solutions to the various Series of puzzles in accordance with the suggested submission dates printed at the top of the page of each Series of puzzles. Then continue on in the contest. If you do not have the bulletin containing all 80 puzzles, write us and we will send it to you free, or else you can obtain it on your local newsstand for 5 cents.

188 *Government's Exhibit 7–E*

Question. Can members of the same family compete in this contest? May members of the U. S. Armed Forces compete?

Answer. Yes. This contest is open to everybody except employees and relatives of employees of Facts Magazine or any person or firm directly or indirectly employed in conducting the contest.

Question. Can I use pencil in filling in the solutions on my Answer Forms?

Answer. Use pencil, pen or typewriter. Please print or write your solutions, as well as your name and address, clearly and legibly.

Question. Can I send check or money order instead of coins, in order to qualify my solutions in accordance with Rule #8?

Answer. Yes. But if you send coins, please wrap in piece of paper before enclosing in envelope.

Question. If I receive the puzzles late, or if I should happen to skip a week or two in submitting my solutions to any particular Series of puzzles, will I be disqualified and not permitted to continue in the contest?

Answer. No. Should you be late in sending in any of the solutions to the 80 puzzles in accordance with the suggested submission dates printed in the puzzle bulletin, please remember you can bring yourself up to date in the contest simply by mailing in the previous weeks' Series of puzzle solutions along with the current series. In all events, you have until June 16th, 1945, as provided in the rules to submit your solutions to all 80 puzzles. Naturally, it will greatly facilitate filing and judging if you submit your answers in accordance with the suggested submission dates as printed on the puzzles.

Question. Can I send in my solutions all at one time to all the remaining puzzles as issued instead of waiting to submit them in accordance with the dates specified?

Answer. Yes.

Question. Can I send payment for the entire Group of 80 puzzles along with my solutions to the first or second or third Series, instead of enclosing coins with each week's solutions?

Answer. Yes. Provided, however, that with your solutions to each of the following Series of puzzles, you are sure to enclose a note stating the date and amount of your previous remittance.

Question. When do I receive the book in return for my qualifying remittances?

Answer. Contestants who submit a complete Group of solutions qualified in accordance with the rules of the contest will receive the book selected for the month of July 1945 by the Literary Classics Book Club. You should receive the book late in July or during the early part of August. Entrants who for any reason drop out of the contest before sending in the entire Group of 80 solutions will receive, after the prizes are awarded, a set of "Quotations by Famous Statesmen."

188-A Question. Can I change or alter any of my solutions once I have submitted them?

Answer. No. In fairness to all contestants, once you have sent us your Answer Forms containing your solutions, no changes or alterations can be made.

Question. Will it be necessary for me to buy the magazine or to subscribe for it in order to compete in the contest?

Answer. No. You are under no obligation now, or at any future time, to buy the magazine or to subscribe for it. Please read the rules of the contest carefully.

Question. What do I receive in return for my remittances which are to accompany the puzzle solutions in accordance with the rules?

Answer. Please read the rules carefully. Rule #8 provides that "each contestant who submits a complete Group of solutions for this contest qualified in accordance with the Rules will receive the book selected for the month of July by the Literary Classics Book Club. Any contestant who becomes eligible to submit, and who does submit, a Group of qualified tie-breaking solutions, will receive the following month's Book Club selection. Entrants who for any reason drop out of the contest before sending in the Group of 80 solutions will receive a set of "Quotations by Famous Statesmen."

Question. Will you please send me an acknowledgment of having received my solutions and remittances as I mail them to you weekly with my remittances?

Answer. The only way we can acknowledge receipt of your solutions is if you specifically request a receipt each time you send in your solutions. We will then mail you a copy of this sheet which will serve as an acknowledgment.

Question. If I accidentally wrote my solutions for a Series of puzzles horizontally across the answer form instead of vertically on the 4 lines but nevertheless got all 4 of them correct, will this be held against me?

Answer. No.

Question. I just happened to come across the announcement of your contest and am wondering if I am too late to enter and compete at this time. How can I enter and bring myself up to date?

Answer. It is not too late to enter the contest now since the rules provide that you may send in your final Series of solutions to the 80 puzzles comprising the Group of puzzles any time before June 16th, 1945. Simply send in your solutions to the various Series of puzzles in accordance with the suggested submission dates printed at the top of the page of each Series of puzzles. Then continue on in the contest. If you do not have the bulletin containing all 80 puzzles, write us and we will send it to you free, or else you can obtain it on your local newsstand for 5 cents.

189. *Government Exhibit 7-F*

Question. Will it be necessary for me to buy the magazine or to for it in order to compete in the contest?

Answer. No. You are under no obligation now, or at any future time, to buy the magazine or to subscribe for it. Please read the rules of the contest carefully.

Question. What do I receive in return for my remittances which are to accompany the puzzle solutions in accordance with the rules?

Answer. Please read the rules carefully. Rule #8 provides that "each contestant who submits a complete group of solutions for this contest qualified in accordance with the Rules will receive the book selected for the month of July by the Literary Classics Book Club. Any contestant who becomes eligible to submit, and who does submit, a Group of qualified tie-breaking solutions, will receive the following month's Book Club selection. Entrants who for any reason drop out of the contest before sending in the Group of 80 solutions will receive a set of "Quotations by Famous Statesmen."

Question. Will you please send me an acknowledgment of having received my solutions as I mail them to you weekly with my remittances?

Answer. The only way we can acknowledge receipt of your solutions is if you specifically request a receipt each time you send your solutions in. We will then mail you a copy of this sheet which will serve as an acknowledgment.

Question. If I happen to write my solution for puzzle No. 2, for example, in the line reserved for puzzle No. 3 on the Answer Form, will that be held against me?

Answer. No.

Question. I just happened to come across the announcement of your contest and am wondering if I am too late to enter and compete at this time. How can I enter and bring myself up to date?

Answer. It is not too late to enter the contest now since the rules provide that you may send in your solutions to the 80 puzzles comprising the Group of puzzles any time before June 16th, 1945.

Simply send in your solutions to the various Series of puzzles in accordance with the suggested submission dates printed at the top of the page of each Series of puzzles. Then continue on in the contest.

If you do not have the bulletin containing all 80 puzzles, write us and we will send it to you free, or else you can obtain it on your local news stand for 5 cents.

Question. I tore or in some other way lost one of the pages or puzzles in the bulletin of puzzles. Please send me another set of puzzles.

Answer. Here it is.

190 Question. Can I have another set of puzzles? I tore or lost the other one, or a friend of mine wants a set.

Answer. Another set of puzzles is enclosed herewith.

Question. I travel a great deal and may be late occasionally in submitting my solutions to you on a weekly basis. Will such lateness disqualify me?

Answer. No. As long as all your solutions to the 80 puzzles are mailed no later than June 16th, 1945, you will still be eligible to compete. However, to facilitate the filing and checking of solutions, please try to follow as closely as possible the weekly mailing dates for the submission of your solutions.

Question. I expect to go into the Services shortly. Will that disqualify me from continuing in the contest?

Answer. No; that will not disqualify you.

191 *Government's Exhibit 8*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.

We are pleased to acknowledge your entry in our puzzle contest. Please accept the cordial good wishes of Facts Magazine for your success in the contest. May we urge you to compete earnestly and seriously in the contest because we assure you that your entry will have every care and consideration.

May we take this opportunity to point out a few of the little things you can do to cooperate with us in making this contest the most efficiently conducted of any in which you have ever participated.

First: may we ask you to write or print your solutions just as clearly and legibly as possible. This is very important, because, in the checking of solutions, the judges can achieve maximum accuracy only when the solution is written or printed in such manner as to leave no doubt as to the correctness or incorrectness of the answer. The same care should be used in printing or writing your name and address on each of the Answer Forms. Please help us to be accurate in spelling your name and in sending notifications to your correct address.

Also, we would like to point out that the book which contestants will receive from the Literary Classics Book Club as provided in the rules, is the July selection of the Club. Therefore, please do not expect your book until that month. Once more, the legibility of name and address are important because we want to be certain that your book reaches you.

As provided in the rules, it is permissible to send in more than one Series of solutions in the same envelope, but please be certain that your name and address are correctly filled in on each Series. Also, kindly wrap coins in a small piece of paper before inserting in your envelope.

It is the hope of Facts Magazine that we will win a great many loyal friends as a result of the contest. As you
192 undoubtedly understand, you are not under any obligation whatever to buy Facts or subscribe to Facts. Merely,

send in your solutions as called for under the rules, enclosing the remittances as specified. On the other hand, if you like Facts —if you enjoy its editorial contents—if you feel that it contains the type of reading that you enjoy, then, of course, we are more than happy that this contest was a means of introducing you to our magazine.

This contest is being conducted for Facts by the same organization that has paid out many hundreds of thousands of dollars in prizes in magazine and newspaper contests. As you have probably noted in the announcements, we will pay $10,000 First Prize, $2,000 Second Prize, $1,000 Third Prize, and 497 other cash prizes.

More than anything else, Facts hopes to win your good will and friendship through this contest. To that end we will faithfully do everything possible to give you the very best possible opportunity to win a prize, consistent of course with fairness to all other persons who are competing in the contest.

With every good wish, and trusting that the contest will be a source of happiness for all concerned—for you, for your competitors and for Facts, we remain

Most cordially yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JSJ : ns.

193 *Government's Exhibit 9*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.

From the Office of HENRY WALSH LEE,
Editor of Facts Magazine:

DEAR CONTESTANT: Please accept the cordial good wishes of the Editors of Facts for your success and pleasure in our Contest.

If you have not yet sent in your solutions to the 2nd or 3rd Series, please mail those two Series as soon as possible—not later than May 5th. Then continue sending in two or more Series each week at your convenience until you have caught up with the submission dates specified in the puzzle booklet for the later Series.

Of course, if you have already sent in your 2nd, 3rd, or 4th or later Series, then, naturally, the advice as to dates given above does not apply to you.

The Editors of Facts want you to know that we feel keenly the confidence you have in our publication. It is the purpose of this contest to widen the friendships of Facts and to popularize the Literary Classics Book Club, and to this end we want to do everything possible, with fairness for all, to make this contest the most efficiently conducted and the most pleasant you have ever entered.

We urge you to try your best in the contest * * * to compete as earnestly and sincerely as you can * * * and to be absolutely confident that if you deserve to win, you shall win.

This is a form letter, sent by the Editors to greet and welcome contestants in the Facts Magazine Puzzle Contest. The duplicate booklet of puzzles herewith is enclosed as a convenience to all contestants for use in case they have mislaid or mutilated any of the puzzles they already have. This booklet will also prove helpful to the many contestants who have requested a duplicate set of puzzles for some friend or relative who wishes to enter the contest.

Again, accept our best wishes, and our assurance that your solutions will have prompt, efficient attention.

Most cordially,

FACTS MAGAZINE,
By HENRY WALSH LEE,
Editor in Chief.

HWL: mb.

194 *Government's Exhibit 10*

ST. LOUIS, MISSOURI, *August 28th, 1945.*

Referred to New York Div. without acknowledgment. Inspector in Charge. St. Louis, Mo. Date 8-28-45. Initials M. MR.

Mr. GUENTHER,
Postal Inspectors Office,
208 Federal Bldg., St. Louis, Missouri.

DEAR MR. GUENTHER: Pursuant to our conversation of the 24th, I am attaching hereto the complete file in the Facts Magazine Puzzle contest.

As previously stated, I secured the first copy of this in one of the Indiana newspapers. After having submitted the first complete set of eighty puzzles, I was informed that all answers were correct and sent an eligibility form, requiring me to subscribe to the Literary Classics Book Club. The length of the subscription was to be decided by me.

After having sent them $12.00, registered mail (receipts for which are part of this file), which was for a four months subscription, I was then forwarded a tie-breaking puzzle contest, which I also submitted, together with the $3.00 required (15¢ for each set of four puzzles).

When this was completed, they sent me an appendage, increasing the amount of the prize money from $20,000.00 to $40,000.00, provided that I sent an additional subscription for a longer period to the Literary Classics Book Club. Copy of this Appendage is also a part of this file.

In their initial rules, they at no time mentioned any subscriptions, nor did they at any time set a definite time for the final closing of the contest. However, at each time they sent a set of puzzles or an eligibility form, they had a definite time limit when it should be mailed. I failed in sending the last Eligibility form on the specified time. However, I did send it about six hours later, which will probably affect my eligibility.

As previously stated to you, I have become a bit dubious, due to the fact they continue requesting funds for additional subscriptions. Should they send me any additional information, I will immediately submit it to you.

Thanking you in advance for any information you may be able to give me on this, I am,

Very truly yours,

Adele M. Beckman,
ADELE M. BECKMAN,
5838 Enright, Apt. 203,
St. Louis 12, Missouri.

195 *Government's Exhibit 10-C*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.,
July 3, 1945.

Tie-Breaking Puzzles Forwarded By Registered Mail

MRS. ADELE M. BECKMAN,
5838 Enright, Apt. 203, St. Louis, Mo.

DEAR MRS. BECKMAN: It gives us great pleasure to advise you that the solutions you submitted in our Puzzle Contest were adjudged correct in their entirety.

In extending our congratulations, we feel sure you will be interested in knowing that many thousands of persons who competed against you either missed one or more of the puzzles or dropped out of the contest entirely. Among the puzzles which contestants found the more difficult were Nos. 39, 40, 59, 63. Contestants who submitted all 80 correct solutions are tied.

By Registered Mail a tie-breaking group of puzzles will be forwarded to you for solution in accordance with the rules of the contest. Ten thousand dollars is the amount which we will pay to the tying contestant who becomes the First Prize Winner, as provided in the rules. As a tying contestant, you have an opportunity to become the winner of the First Prize.

Facts Magazine desires to take every precaution to avoid all possible disappointment or ill-will on the part of contestants. For that reason, we wish to make it clear to you that the receipt of this tie-breaker by you does not mean that you have already won a prize or that you are certain to win First Prize, Second Prize or any other prize in this contest. If you should win the $10,000 First Prize or any other prize, you will be definitely notified of that fact by us as soon as possible. Meanwhile, in submitting solutions to the tie-breaker, to avoid any and all possibility of disappointment, please consider the tie-breaker strictly as provided for in the rules, and not as assurance by us, either direct or implied, that you are going to win the $10,000 First Prize, Second Prize or any other prize in the contest.

Within the next day or two you may expect to receive by Registered Mail the tie-breaking puzzles. Full instructions will be printed with the tie-breaking puzzles, as to the date for submitting your tie-breaking solutions.

With all good wishes, and again congratulating you, we remain

Very sincerely yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JSJ:ar.

196 *Government's Exhibit 10–D*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices
75 WEST STREET, NEW YORK 6, N. Y.,
July 5, 1946.

MRS. ADELE M. BECKMAN,
5838 Enright, Apt. 203, St. Louis, Mo.

DEAR MRS. BECKMAN: Under separate cover I am sending you a Form for Specifying Prize Eligibility. This form should be filled in and returned to us within 5 days after receipt by you if possible, and sooner if you can do so. It must become a part of your file in the contest.

In view of your standing in the contest, you will be delighted to know that we are going to pay double the amount of the prizes originally offered in this contest as provided in the Eligibility Form which you will receive. This extra $17,500.00 which we are going to pay is our effort to encourage the purchase of more books issued by the Literary Classics Book Club.

You are now tied, with eligibility to compete for as much as $10,000.00 as First Prize. Under our double-prize offer, you may win as much as $20,000.00 First Prize. Second Prize may be as much as $4,000.00, Third Prize as much as $2,000.00. Any portion of the extra $17,500.00 which is not required to be paid under the terms of four double-prize offer will be used to increase the number of prizes beyond the 500 Prizes already provided.

The necessary provisions for qualifying yourself to compete for the double prizes are fully set forth in your Prize Eligibility Form, but stated briefly, the offer is simply this: If you will remain a member of our Book Club for the two-month period specified in the Eligibility Form, then any prize you may win will be increased by one-half. If you will remain a member of our Book Club for the four-month period specified, then any prize you may win will be doubled. If you wish, you can send either one or two 2-month paid memberships as gifts to friends, and thus qualify for the added one-half or doubled prizes.

Please understand that your eligibility to compete for the original prizes remains, regardless of whether you do or do not

qualify for eligibility to compete for the higher prizes. In other words, this is a privilege and not an obligation in any sense of the word.

With all good wishes, we remain
Most sincerely yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JSJ:jr.

197 *Government's Exhibit 10-E*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.,
July 6, 1945.

MRS. ADELE M. BECKMAN,
5838 Enright, Apt 203, St. Louis, Mo.

DEAR MRS. BECKMAN: You will find enclosed herewith the Prize Eligibility Form mentioned in my previous letter.

This Prize Eligibility Form requires your signature in two places to enable you to become eligible to compete for as much as $20,000 or $15,000 as First Prize in accordance with the terms of the double prize offer, and in addition, provides the necessary spaces for signifying acceptance of the terms of the offer.

This Form and any extensions applying to same must become a part of your file in the contest, and we will thank you to fill in same and mail to us within five days after receipt by you if possible, or earlier if you can do so.

As announced in my letter, we will pay the doubled and increased prizes to those winners who qualify for same as per the requirements specified in the Eligibility Form or, in the event any portion of the added $17,500 is not used in paying doubled and increased prizes to the winners, then in extra prizes to be added to the 500 Prizes already provided.

Obviously, it would seem most unfortunate to me if any tied contestant who becomes a prize winner had failed to take the fullest advantage of this opportunity to win the doubled prize. To the

1st Prize winner it means the difference between receiving $10,000, and receiving $15,000 or $20,000. To the 2d Prize winner it means the difference between receiving $2,000, and receiving $3,000 or $4,000. In every case it means receiving one and one-half or twice the amount of the original prizes offered.

To be awarded double the amount of any prize you may win, the only requirement necessary is that you remain a member of the Book Club for the four-month period specified in the Form, or, if you prefer, remain a member for the two-month period and give another two-month membership to a friend. In case you merely continue your own membership for the two-month period specified, you become eligible to compete for $15,000 instead of $10,000. Payment for the book memberships is to be sent in with the Eligibility Form.

198 The enclosed Prize Eligibility Form specifies exactly what the increased value of First Prize will be if it should be won by you in case you continue in the Book Club for the two-month period, or the four-month period, as provided in the Eligibility Form. Gifts of Book Club memberships can be given to friends if you prefer. All of the 500 prizes will be increased in proportion.

At this point I would like to point out that your eligibility to compete for all of the original prizes offered remains the same regardless of whether or not you send in the continuation of your own membership or send in any gift memberships. In other words, please understand that there is no obligation whatever. Instead, we consider it a marvelous opportunity. The sending in of the Book Club memberships cannot cause any contestant to win. It will merely increase the amount of the prize that may be won.

The Prize Eligibility Form should be filled in and mailed back to us within five days after you receive same if possible, or earlier if you can do so. The special mailing envelope enclosed herewith should be used for returning the Price Eligibility Form. Please enclose in the same envelope the proper remittance for the Book Club memberships you send in. We will appreciate it if you will mail back the Prize Eligibility Form to us as soon as possible, because, again, I would like to point out that it must become a part of your file in the contest.

We consider this a wonderful opportunity for the contestant and definitely not as an obligation. You are one of the tied contestants, and someone among the tying contestants must inevitably win the First Prize in this contest. The winning of the prizes will be determined by the tie-breaking requirements of the contest as provided in the rules. We naturally do not know who will win the First Prize or the Second Prize or any prize at all for

that matter. On the other hand, we do know positively that the amount of the First Prize will be either $20,000, $15,000, or $10,000, depending on whether or not the winner, whoever the winner may be, submits the Book Club memberships as specified in the Eligibility Form. The same proportionate increases apply to all other prizes offered in the contest.

We would like to point out again that there is no financial saving in prizes to the sponsor in case no doubled or increased prizes are won, because any portion of the added $17,500 which is not used in paying doubled and increased prizes will be used for extra prizes to be added after the 500th Prize. Thus, the entire amount must be paid out in prizes in one form or another.

Awaiting receipt of your Prize Eligibility Form in an early mail, and wishing you all success in the contest, consistent with fairness to all, believe me to be

Most sincerely yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JSJ:jr.

199 *Government's Exhibit 10–F*

ST. LOUIS, MISSOURI, *July 12th, 1945.*

Miss JUDITH S. JOHNSON,
Contest Editor, Facts Magazine,
P. O. Box 324, Church St. Post Offie (Annex),
New York 8, N. Y.

DEAR MISS JOHNSON: Under separate cover, registered mail, I am sending you the complete set of tie-breaking puzzles, numbers one to eighty inclusive. My reason for sending them all at one time, in one envelope, was because of the currency involved. For the same reason, I registered same.

Also, under separate cover, registered mail, the prize eligibility form, together with $12.00 in currency has gone forward to you, in accordance with the rules and regulations of the contest.

If there are any other requirements, I feel sure you will advise me.

It has been a pleasure, I assure you to have had the privilege of being one of the contestants—I enjoyed it immensely.

Thanking you, I am,

Sincerely,

ADELE M. BECKMAN,
5838 Enright Ave., Apt. 203,
St. Louis 12, Missouri.

200 *Government's Exhibit 10–G*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.,
August 15, 1945.

MRS. ADELE M. BECKMAN,
5838 Enright Apt. 203, St. Louis 12, Mo.

DEAR MRS. BECKMAN: It is a pleasure to notify you that you made a perfect score of 80 correct solutions on the first Group of tie-breaking puzzles. Your total score in the contest at this point is 160 correct solutions, and you still remain tied with contestants who have scores of 160 identical with your own.

The final tie-breaking puzzles are now being prepared. The prize winners will be determined after those contestants with present scores of 160 correct solutions have received and have submitted their solutions to the final tie-breaker accompanying them with the letter as provided by the Official Rules.

We believe we have delightful news for all contestants who, like yourself, now have scores of 160 correct solutions and are now eligible to compete in the final tie-breaking phases of the contest. Here is the news:—we are going to make it possible for the First Prize Winner to receive as much as $40,000; 2nd Prize Winner $8,000; 3rd Prize Winner $4,000; with all 497 other prizes quadruple the original amounts offered.

While we are sure that you are happy to know that you have solved 160 puzzles correctly thus far, and are now in position to go into the final tie-breaking phases of the contest, FACTS Magazine desires to continue to take every precaution within its power to prevent disappointment or ill will among those who fail to win prizes.

Therefore, please let me again make clear, just as I did when sending you the first Group of tie-breaking puzzles, that this letter is not to be interpreted by you as meaning that you have already won the First Prize or any prize at all.

201 Please understand that your status is strictly this: It is possible that you may win First Prize, or one of the other

prizes, but this possibility must be based on your submissions to the final tie-breaking requirements of the contest. Also, realize at the same time that the final tie-breaking puzzles will be by far the most difficult puzzles presented in the contest and that you are competing with a very large number of very able competitors. Someone among the many contestants (perhaps it may be you or it may be someone else) who now has a present score of 160 correct solutions will ultimately win First Prize in this contest, and this will be determined by the final tie-breaking requirements as provided in the rules, but FACTS Magaine does not want any contestant to be under the impression that he or she is certain to win any prize or that a very small number of people are tied.

We urge you to compete seriously and diligently in the final tie-breaking phases with our assurance that every possible means has been provided to give your submissions careful, accurate, efficient attention, and that if you are entitled to win you shall win, at the same time realizing that this is a contest among a large number of contestants and that the only thing that the sponsor can promise is that your entry will be given the identical, fair, careful attention of every other entry and that the prizes will be paid to the rightful winners.

It is our great desire to conduct this contest so fairly and so efficiently that whether you win as much as $40,000.00 or whether you win no prize whatever, you nevertheless will always feel that FACTS Magazine did everything within its power to make the facts clear to you, and to give you a full, fair, honorable opportunity to win.

Your present eligibility to compete for the prizes as previously offered will be in no way affected by whether or not you elect to become eligible to compete for the increased prizes up to $40,000.00 referred to in this letter.

Trusting that this contest may result in your entire pleasure and satisfaction, consistent with fairness to one and all, we remain

Very sincerely yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JSJ:R**.

202 *Government's Exhibit 10–H*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.,

August 16, 1945.

MRS. ADELE M. BECKMAN.

5838 Einright, St. Louis, Mo.

DEAR MRS. BECKMAN: In accordance with my letter of August 15th, we are pleased to advise that we are forwarding to you under separate cover an Appendage for your Prize Eligibility Form.

We believe that contestants will be delighted to know that under the conditions set forth in the Appendage it is possible that First Prize winner will receive as much as $40,000; Second Prize winner will receive as much as $8,000; Third Prize winner $4,000, with all 497 prizes being four times the amount originally offered.

The Appendage fully explains the above and will establish your status as well as that of all other contestants in the matter of Eligibility to compete for the maximum prizes.

Midnight, Saturday, August 25th, is the final deadline for mailing back the Appendage to us, and no increase in prize eligibility can be established if the Appendage is mailed to us after that hour. Therefore, please be certain that your Appendage is returned to us postmarked not later than midnight, Saturday, August 25th, 1945.

With all good wishes, consistent with fairness for one and all, we remain

Most sincerely yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JSJ:R**.

203 *Government's Exhibit 10–I*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.,
August 17th, 1945.

MRS. ADELE M. BECKMAN,
5838 Enright, Apt. 203, St. Louis, Mo.

DEAR MRS. BECKMAN: Enclosed you will find the Appendage referred to in my previous letter.

Your signature is required on the upper portion of the first page, and you are to check either line (A), (B), (C), (D), or (E) on the same page. To obtain eligibility to compete for a First Prize of $40,000, $35,000, $30,000, or $25,000, your signature is also required at the bottom of the first page and in the proper space provided on the following pages.

Please sign and designate as required, and return the Appendage as promptly as possible, but not later than Midnight, Saturday, August 25th.

Before executing, please read this letter and the Appendage very carefully. Your present status in Section (E) entitles you to receive $20,000 if you are the winner of First Prize. Your preference expressed in this Appendage will determine whether 1st Prize if won by you will be in the amount of $40,000, $35,000, $30,000 or $25,000 or whether any other prize if won by you will be increased proportionately.

As you will note by the Appendage, we have added an extra $35,000 to the prize fund already established, and we now stand ready to pay you either $40,000; or $35,000; or $30,000; or $25,000; or $20,000 if you become the winner of First Prize under the provisions of the Appendage. The sole determining factor in increasing the amount of a prize is the length of membership in our Book Club effective with the October book. As you know, you have already subscribed and paid for four months of membership beginning with the October book in accordance with your Eligibility Form, and thus you have already established your eligibility to compete for $20,000 as First Prize.

By the provisions of the enclosed Appendage you can establish your eligibility to compete for a First Prize of $40,000, $35,000, $30,000, or $25,000 instead of $20,000.

204 As specified in the Appendage, you would receive $40,000 as First Prize if same is won by you if you continue your membership in the Book Club for eight months after the four months for which you have already paid.

Whether you wish to remain in the Book Club for eight months, six months, four months or two months longer is naturally something you must decide for yourself. As we said before, we stand ready to pay these huge added amounts to winners on the basis of the length of membership of the winners in the Book Club, our purpose in appropriating this large extra amount of money for prizes being to sell more of the Book Club books in order to obtain the advantages and economies that accrue from large production for a large membership.

In inviting contestants to compete for increased prizes through continuing to buy our Book Club books, we have this request to make. The request is simply this: Please do not spend your money for these books unless you really and truly want the books for your own home library, or for gifts to friends. In other words, we hope no contestant will buy the books merely for the purpose of increasing a prize, and we ask that no contestant spend more money for books than that contestant would normally expect to spend over a period of months for the purchase of similar books.

We want to be certain that the contestant who qualifies for eligibility to compete for $40,000, $35,000, $30,000, or $25,000 by purchasing the books of the Book Club truly WANTS the books he or she is buying and therefore feels that he is getting good books for the money spent irrespective of whether or not that contestant wins the highest prize of $40,000 or wins no prize at all.

It is our belief that the classics published by the Literary Classics Book Club are distinguished by beautiful bindings, original introductions, superb art and typography. We believe these volumes are splendid cultural additions to a home library. In this spirit, we seek to sell our books only to persons who truly wish to own our classics and who under no circumstances will f[illegible] that they are spending money on something they do not wan[illegible] simply because the purchase involves eligibility to compete for cash prizes.

We also wish to make clear that you are not under any obligation whatever to lengthen your membership. You are now eligible to compete for any of 500 prizes of which First Prize is $20,000. Whether you do or do not increase this eligibility to $25,000, $30,000, $35,000, or $40,000 will in no way have any effect on

whether or not you win First Prize or any other prize. Your decision to increase the amount of the prize for which you are eligible to compete cannot CAUSE you to win. It can only
205 increase the AMOUNT of a prize in case you become the winner of same. Winners will be selected solely in accordance with the rules on the basis of the final tie-breaking requirements of the contest as stated in my letter of August 15th in which I notified you that you had a score of 160 correct solutions and were tied with other contestants with the same score, and that the prizes would be awarded on the basis of the submissions to the final tie-breaking puzzles and if necessary the letter in accordance with the final tie-breaking requirements of the contest.

Please understand that there is no financial saving in prizes to us in the event no increased prizes are won, because any portion of the added $35,000 which is not used in paying increased prizes will be used for extra prizes to be added after the 500th prize. Thus, the entire amount must be paid out by us in prizes in one form or another.

You will recall that I said in a previous letter that it would seem to me most unfortunate if any contestant who becomes a prize winner had failed to take fullest advantage of this opportunity to win the maximum prizes. If you win First Prize it can mean the difference between receiving $20,000, and receiving as much as $40,000. As you will note in the Appendage, you can increase the length of your membership by two months, four months, six months or eight months. Each two months of increased membership is equivalent to an additional $5,000 in the amount of First Prize. We believe that those contestants who value classic literature in beautiful bindings will be delighted with this opportunity.

Upon executing the enclosed Appendage, please mail same back to us by return mail if possible, using the enclosed self-addressed special envelope. Check or money order enclosed should be made payable to FACTS Magazine. The Appendage must be mailed before Midnight, Saturday, August 25th, to establish increased prize eligibility.

Awaiting receipt of your Appendage, with your designation of Section (A) or (B) or (C) or (D) or (E), and wishing you all success in the contest, consistent with fairness to all, we rema...

Most sincerely yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JSJ:R**
Encls.

206 *Government's Exhibit 10–J*

***Memo to Contestant:*

This Form Will Become Part of Your File. It Must be mailed by you before Midnight, August 25th, 1945 in order to be within time limits prescribed for increased Prize Eligibility.

APPENDAGE FOR FORM FOR SPECIFYING PRIZE ELIGIBILITY

Date_____

I, _____, a contestant in the Facts Magazine Puzzle Contest, residing at _____
(Street address)

_____
(City) (State)

am hereby executing this Appendage for Prize Eligibility Form in confirmation of the fact that I have been notified by Facts Magazine that all prizes originally offered in the Facts Magazine Puzzle Contest will be paid to those who become winners of same in amounts increased in value up to four times the amounts of the prizes as originally offered, with maximum First Prize being $40,000.00, provided that those who become winners of same have submitted prior to Midnight, Saturday, August 25th, 1945, the requisite Book Club memberships as provided on Page Two of this Form; and I further confirm the fact that I have received notice from Facts Magazine by letter dated August 15th that I have a present score of 160 correct solutions and am now tied with other contestants who have the same present score, and pursuant to said letter defining my status and the requirements as specified in this Appendage, I wish to compete for prizes in accordance with the Eligibility as checked below. Therefore I do hereby say

That I desire eligibility to compete for

(A) $40,000.00 first prize eligibility. All 499 other prizes quadrupled. (Fill in (A) on page 2.)

(B) $35,000.00 first prize eligibility. All 499 other prizes multiplied by three and one-half times. (Fill in (B) on page 2.)

(C) $30,000.00 first prize eligibility. All 499 other prizes tripled. (Fill in (C) on page 2.)

(D) $25,000.00 first prize eligibility. All 499 other prizes multiplied by two and one-half times. (Fill in (D) on page 2.)

(E) $20,000.00 first prize eligibility. All 499 other prizes doubled. (I have previously qualified for eligibility to compete for prizes herein stated.)

In order to be eligible to compete for the increased prizes as checked above, I have submitted on page (2) of this Form

207 ———(A)—one 8-month membership ($40,000.00 Eligibility).
———(B)—one 6-month membership ($35,000.00 Eligibility).
———(C)—one 4-month membership ($30,000.00 Eligibility).
———(D)—one 2-month membership ($25,000.00 Eligibility).
I enclose herewith $———— in payment for same, in accordance with my instructions filled in on Page (2) of this Form.
Contestant Signature————————————————
(In Red.)
NOTE: This form must be mailed on or before Midnight, August 25th, 1945. All remittances are to be made payable to Facts Magazine.

208 (A) $40,000.00 Eligibility (by continuing your Membership for 8 months)

(A) $40,000.00 First prize eligibility (One 8-month membership required).
I wish to be eligible to compete for $40,000.00 as First Prize, or four times the original value of any prize that may be won by me. I attach hereto in payment of the 8 books of the Literary Classics Book Club which are to be issued for the 8 consecutive months beginning with the Book of February 1946; (Check Which) $24 as payment in full, or $12, as the first payment and $12 to be sent you next week. I have previously purchased and paid for the books for the four preceding months in accordance with my Eligibility Form. Send books to:

Name ————————————————————

Address ————————————————————

City ———————— State ————————

(B) $35,000.00 Eligibility (by continuing your Membership for 6 months)

(B) $35,000.00 first prize eligibility (One 6-month membership required).
I wish to be eligible to compete for $35,000.00 as First Prize, or three and one-half times the original value of any prize that may be won by me. I attach hereto in payment of the 6 books of the Literary Classics Book Club which are to be issued for the 6

consecutive months beginning with the Book for February 1946; (Check Which)——$18 as payment in full, or ——$12 as the first payment and $6 to be sent to you next week. I have previously purchased and paid for the books of the four preceding months in accordance with my Eligibility Form. Send books to:

Name ----------

Address ----------

City ---------- State ----------

(C) $30,000.00 eligibility (by continuing Your Membership for 4 Months)

(C) $30,000.00 first prize eligibility (One 4-month membership required-.

I wish to be eligible to compete for $30,000.00 as First Prize, or an increase of three times the original value of any prize that may be won by me. I attach hereto $12 in payment for the four books of the Literary Classics Book Club which are to be issued for the four consecutive months beginning with the Book for February 1946. I have previously purchased and paid for the books of the four preceding months in accordance with my Eligibility Form. Send books to:

Name ----------

Address ----------

City ---------- State ----------

(D) $25,000.00 eligibility (by continuing Your Membership for 2 Months)

(D) $25,000.00 first prize eligibility (One 2-month membership required).

I wish to be eligible to compete for $25,000.00 as First Prize, or two and one-half times the original value of any prize that may be won by me. I attach hereto $6.00 in payment for the two books of the Literary Classics Book Club, which are to be issued for two consecutive months beginning with the Book for February 1946. I have previously purchased and paid for the books of the four

preceding months in accordance with my Eligibility Form. Send books to:

Name _____

Address _____

City _____ State _____

209 Contestant's Signature _____

Address _____

City _____ State _____

210 *Government's Exhibit 10–K*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.,
August 18, 1945.

MRS. ADELE M. BECKMAN,
5838 Enright, Apt. 203, St. Louis, Mo.

DEAR MRS. BECKMAN: At this moment when the hearts of the world are gladdened by the end of the War, permit me to take this opportunity on behalf of Facts Magazine to express our gratification to those who have participated in our contest and to voice the hope that your friendship for Facts, begun during World War II, will last through eternal years of peace.

It is in that spirit that we send this letter to you.

As you undoubtedly realize, Facts Magazine stands ready to pay as much as $40,000.00 in cash to the winner of First Prize in our contest in accordance with the provisions in the Appendage forwarded to you yesterday.

Forty thousand dollars is truly a cash fortune. For many persons it can mean financial independence for life. For others, it can mean the money with which to buy a beautiful home, or a farm, or the money with which to start a business. Indeed, it is a cash prize of such huge amount, that it can bring tremendous happiness

to practically anyone who wins it. Facts wants to be certain that this opportunity does not bring unnecessary disappointment to our contestants whom we consider as our good friends.

Between now and Midnight of Saturday, August 25th, you have the problem of deciding whether you wish the eligibility to compete for the maximum amount of $40,000, or whether the amount for which you wish to become eligible to compete shall be $35,000, $30,000, $25,000 or a lesser amount.

Because the prize is so large, and because it can be such an important event in the life of the winner, it seems appropriate to emphasize once again the spirit in which we make it possible for you to win this large amount.

First, let me say that we hope you will decide to become eligible to compete for the maximum award that can be won in the contest, $40,000, but at the same time we trust you will do so only if you really and truly want the Book Club books which you will receive for the money you pay.

211 We emphasize this point because, in order to become eligible to compete for $40,000, $35,000, $30,000 or $25,000 as First Prize, with all other prizes increased proportionately over the original amounts offered, it is necessary to buy and pay for the various Book Club books as specified in the Appendage. If you really want the books, either for your own home library or as gifts for friends, then we will feel that the money you pay for same is well and wisely spent. On the other hand, we do not want any contestant to purchase the books merely to become eligible to compete for the large prizes, without any desire to possess the books for their own sake.

The entire spirit of this letter is to prevent disappointment or ill will on your part in the event you do not win the prize on which you have set your heart. As we have said before, it is possible for you to win as much as $40,000 under the provisions of the Appendage, and we hope you will decide to become eligible to compete for that maximum amount. But we want you to fully understand your status as defined in my letter of August 15th, and we want to discourage you from purchasing books that you really do not want merely because the purchase enables you to become eligible to compete for prizes up to $40,000.

I am sure you understand that your eligibility to compete for the prizes as originally offered or for which you have already established eligibility is in no way affected by whether or not you decide to become eligible to compete for the maximum prize of $40,000, or the lesser prizes of $35,000, $30,000, $25,000, etc. We present the offer as a marvelous opportunity to those who sincerely want the Book Club books, and not as an obligation to any contestant in any sense of the word.

Permit me to point out once more that the Appendage must become part of your file in the contest, and must be mailed back to us, postmarked before Midnight, Saturday, August 25th.

As we said before, we hope you will decide to compete for the maximum prize that can be won, but we ask that you do so in the spirit of this letter. Our fondest hope is that at the end of the contest, irrespective of whether you receive a letter from us saying that we regret you did not win, or whether you receive a letter enclosing a check for $40,000, or a lesser amount, you will always feel that you got full value in books for every penny you sent us, and that the contest was fine and fair in every way—and that you will always remain a true and lasting friend of

Very sincerely yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JSJ:R**.

212 *Government's Exhibit 11–C*

* * * *Memo to Contestant:*

This Form Must Become Part of Your File. Will You Please Fill In and Mail Same Within 5 Days After Receipt By You If Possible, (Or Earlier If You Can.)

FORM FOR SPECIFYING PRIZE ELIGIBILITY

Date _____

I, _____, a contestant in the FACTS MAGAZINE Puzzle Contest, residing at _____
(Street address)

_____, _____
(City) (State)

in recognition of the fact that all prizes originally offered in the Facts Magazine Puzzle Contest will be paid to winners of same in amounts increased in value by one-half or doubled, provided that those winners of same have submitted the requisite Book Club memberships as provided on Page Two of this form prior to the conclusion of the contest and within the future final time limit which will be later specified by the sponsor, do hereby say

That I desire eligibility to compete for

(Check which)

(A–AA) $20,000.00 first prize eligibility. All 499 other prizes doubled. (Fill in (A) or (AA) on Page 2.)

(B) $15,000.00 first prize eligibility. All 499 other prizes increased by one-half. (Fill in (B) on Page 2.)

(C) $10,000.00 first prize eligibility. (No increase in any prize, and no added membership required.)

In order to be eligible to compete for the increased prizes as checked above, I have submitted on Page 2 of this Form (Check which)

_____ (A) one 4-month membership ($20,000.00 Eligibility).

_____ (AA) two 2-month memberships ($20,000.00 Eligibility).

_____ (B) one 2-month membership ($15,000.00 Eligibility).

I enclose herewith $_____ in payment for same, in accordance with my instructions filled in on Page 2 of this Form.

Contestant's Signature _____

Address _____

City _____ State _____

Your signature must also be signed at bottom of page 2 of this Form for $20,000.00 or $15,000.00 Prize Eligibility.

NOTE: This Eligibility Form must be filled in with names and addresses on Page 2 of same to qualify for $20,000.00 or $15,000.00 Prize Eligibility. Will you please mail same, together with whatever remittance should be attached, within 5 days after receipt by you if possible, or earlier if you can.

213 (A) $20,000.00 eligibility (by continuing Your Membership for 4 Months)

(A) $20,000 first prize eligibility (one 4-month membership required.)

I wish to be eligible to compete for $20,000.00 as First Prize, or double the original value of any prize that may be won by me. I attach hereto $12.00 in payment for the four books of the Literary Classics Book Club which are to be issued for the four consecutive months beginning with the Book for October, 1945. Send books to:

Name _____

Address _____

City _____ State _____

(AA) $20,000.00 eligibility (by continuing Your Membership for 2 Months, and Sending In a 2-month Gift Membership)

(AA) $20,000.00 first prize eligibility (two 2-month memberships required.)

I wish to be eligible to compete for $20,000.00 as First Prize, or double the original value of any prize that may be won by me. I attach hereto $12.00 in payment for the two books of the Literary Classics Book Club which are to be issued for the two consecutive months beginning with the Book for October, 1945, both of which books are to be sent to each of the two persons whose names are listed below.

Name _____

Address _____

City _____ State _____

Name _____

Address _____

City _____ State _____

(B) $15,000.00 eligibility (by continuing Your Membership for 2 Months)

(B) $15,000 first prize eligibility (one 2-month membership required.)

I wish to be eligible to compete for $15,000.00 as First Prize, or an increase of one-half more than the original value of any prize that may be won by me. I attach hereto $6.00 as payment in full for the two books of the Literary Classics Book Club which are to be issued for the two consecutive months beginning with the Book for October, 1945. Send the books to:

Name _____

Address _____

City _____ State _____

Contestant's signature _____

Address _____

City _____ State _____

214 *Government's Exhibit 11–F*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.,
August 16, 1945.

Mr. MARTIN WOHL,
3107 Cleveland Avenue, Washington 8, D. C.

DEAR MR. WOHL: In accordance with my letter of August 15th, it is now possible that the winner of First Prize will be paid either $40,000; $35,000; $30,000; $25,000; $20,000; $15,000; or $10,000.

The provisions under which you, if you become the winner of First Prize, can receive as much as $40,000 are fully set forth in an Appendage for the Prize Eligibility Form which I am now mailing to you under separate cover.

In connection with the original Prize Eligibility Form which we recently sent to you and which has not yet been returned to us, please be advised that in view of the fact that the Appendage which you will receive in the next day or so establishes Midnight, Saturday night, August 25th, as the final, official deadline for becoming eligible to compete for the increased prizes, and in addition, establishes the maximum amounts of the prizes themselves, therefore, only the Appendage need be filled in and returned to us by you.

We believe that contestants will be delighted to know that under the conditions set forth in the Appendage it is possible that First Prize winner will receive as much as $40,000; Second Prize winner will receive as much as $8,000; Third Prize winner $4,000; with all 497 prizes being four times the amount originally offered.

The Appendage fully explains the above and will establish your status as well as that of all other contestants in the matter of eligibility to compete for the maximum prizes.

Midnight, Saturday, August 25th, is the final deadline for mailing back the Appendage to us, and no increase in prize eligibility can be established if the Appendage is mailed to us after that hour. Therefore, please be certain that your Appendage is returned to us postmarked not later than midnight, Saturday, August 25th, 1945.

With all good wishes, consistent with fairness for one and all, we remain

Most sincerely yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JSJ:RO.

215 *Government's Exhibit 12–A*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.,
July 3, 1945.

Special Notice and Puzzles Forwarded by Registered Mail

Mrs. A. D. MOTT,
Shell Rt.; Greybille, Wyo.

DEAR MRS. MOTT: It gives me great pleasure to advise that you will be eligible to compete for any of 500 prizes up to $10,000 in accordance with the Special Notice which is being enclosed with the puzzles being forwarded to you under separate cover by Registered Mail. The prizes for which you are eligible to compete are exclusively for those who did not submit 80 solutions correct in their entirety as explained in the Special Notice.

Special envelopes for mailing your solutions back to us as well as the dates for mailing same are included with the instructions printed with the puzzles, which will go forward to you by Registered Mail.

With all good wishes, I remain,

Sincerely yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JSJ/sw.

216 *Government's Exhibit 12–B*

SPECIAL NOTICE IN CONNECTION WITH TIE-BREAKING PUZZLES

Included With This Announcement 500 Added Prizes Will Be Awarded Exclusively to Those Contestants Who Did Not Submit 80 Correct Solutions to the First Group of Puzzles

Those contestants who correctly solved all 80 puzzles of the first group of 80 puzzles are now tied in the contest for the prizes as originally offered. Those contestants have been forwarded a tie-breaking group of puzzles as provided by the rules.

Highest Prize You Can Win Is $10,000

Those who did not submit 80 correct solutions to the first group of puzzles, while not eligible to the prizes as originally offered, will nevertheless be eligible, in accordance with this notice, to compete for the added group of 500 prizes as listed at the right. The largest prize you can win is $10,000.

Use the Special Envelopes Enclosed Herewith for Sending in Your Solutions

We enclose herewith the same puzzles now being sent to those contestants who correctly solved all 80 puzzles of the first group of 80 puzzles.

Three self-addressed envelopes are enclosed with this notice and puzzles. Please use these envelopes in sending in your solutions to the puzzles, making certain that your name and address are plainly printed in the upper left corner of the envelope.

By virtue of the fact that you did not submit 80 correct solutions, you are eligible to compete for the added prizes listed at the right. This is your status in the contest. Please understand clearly that you are not eligible to win any of the prizes as originally announced. Note that the largest prize that you can win in this competition is $10,000.

In determining the winners of this added group of 500 prizes, the solutions to the first group of 80 puzzles will be ignored. With the exception above noted, all of the original rules and regulations governing the original contest, including the breaking of ties and the determination of winners will apply.

(Here Are the Added Prizes You Are Eligible To Compete for)

THE PRIZE

These additional prizes are exclusively for those contestants who did not submit 80 correct solutions to the first group of puzzles.

1st Prize	$10,000.00
2nd Prize	$2,000.00
3rd Prize	$1,000.00
4th Prize	$500.00
5th Prize	$250.00
6th Prize	$250.00
7th Prize	$250.00
8th Prize	$150.00
9th Prize	$100.00
10th Prize	$100.00
Next 90 Prizes each $10	$900.00
Next 400 Prizes each $5	$2,000.00
Total	$17,500.00

Submit Your Solutions According to Dates Specified

The opportunity to win as much as $10,000 is now before you. Please note carefully the dates for sending in your solutions as specified on the answer forms printed with the puzzles.

In conducting this contest, Facts has made every effort to maintain the good will and continued friendship of those who took part in the contest.

We hope that your participation in the contest will be a source of pleasure and pride to you.

217 *Government's Exhibit 12–D*

A DIVISION OF READ MAGAZINE, INC.

FACTS

THE MAGAZINE MORE FASCINATING THAN FICTION

PUBLISHED MONTHLY BY FACTS PUBLISHING COMPANY

Editorial and General Offices

75 WEST STREET, NEW YORK 6, N. Y.,
July 6, 1945.

Mrs. A. D. MOTT,
Shett Route, Greybill, Wyo.

DEAR MRS. MOTT: You will find enclosed herewith the Prize Eligibility Form mentioned in my previous letter.

This Prize Eligibility Form requires your signature in two places to enable you to become eligible to compete for as much as $20,000 or $15,000 as First Prize under the provisions of the offer, in accordance with the terms of the double-prize offer, and in addition, provides the necessary spaces for signifying acceptance of the terms of the offer.

This Form and any extensions applying to same must become a part of your file in the contest, and we will thank you to fill in same and mail to us within five days after receipt by you if possible, or earlier if you can do so.

As announced in my letter, we will pay the added prizes in doubled and increased amounts to those winners who qualify for same as per the requirements specified in the Eligibility Form or, in the event any portion of the added $17,500 is not used in paying doubled and increased added prizes to the winners, then in extra prizes to be added to the 500 Prizes already provided.

Obviously, it would seem most unfortunate to me if, at the conclusion of the contest, it turns out that any winner had failed to take full advantage of this opportunity to win the doubled prize. To the 1st Prize winner it means the difference between receiving $10,000, and receiving $15,000 or $20,000. To the 2nd Prize winner it means the difference between receiving $2,000, and receiving $3,000 or $4,000. In every case it means receiving ONE AND ONE-HALF or TWICE the amount of the prizes specified in the Special Notice.

To be awarded double the amount of any prize you may win, the only requirement necessary is that you remain a member of the Book Club for the four-month period specified in the Form, or,

if you prefer, remain a member for the two-month period and give another two-month membership period to a friend. In case you merely continue your own membership for the two-month period specified, you become eligible to compete for $15,000 instead of $10,000. Payment for the book memberships is to be sent in with the Eligibility Form.

The enclosed Prize Eligibility Form specifies exactly what the increased value of First Prize will be if it should be won by you in case you continue in the Book Club for the two-month period, or the four-month period, as provided in the Eligibility Form. Gifts of Book Club memberships can be given to friends if you prefer. All of the 500 prizes will be increased in proportion.

218 At this point I would like to point out that your eligibility to compete for the prizes offered in the Special Notice remains the same regardless of whether or not you send in a continuation of your own memberships or send in any gift memberships. In other words, please understand that there is no obligation whatever. Instead, we consider it a marvelous opportunity. The sending in of the Book Club memberships cannot cause any contestant to win. It will merely INCREASE the amount of the prize that may be won.

The Prize Eligibility Form should be filled in and mailed back to us within five days after you receive same if possible, or earlier if you can do so. The special mailing envelope enclosed herewith should be used for returning the Prize Eligibility Form. Please enclose in the same envelope the proper remittance for the Book Club memberships you send in. We will appreciate it if you will mail back the Prize Eligibility Form to us as soon as possible, because, again, I would like to point out that it must become a part of your file in the contest.

We consider this a wonderful opportunity for the contestant and definitely not as an obligation. You are now eligible to compete for the prizes as itemized in the Special Notice, of which the First Prize is $10,000.

The winning of these prizes, as explained clearly in the Special Notice, will be determined by the tie-breaking requirements of the contest as provided in the rules. We naturally do not know who will win the First Prize or the Second Prize or any prize at all for that matter. On the other hand, we do know positively that the amount of the First Prize will be either $20,000, $15,000 or $10,000, depending on whether or not the winner, whoever the winner may be, submits the Book Club memberships as specified in the Eligibility Form. The same proportions increases apply to all other prizes offered in the Special Notice.

We would like to point out again that there is no financial saving in prizes to the sponsor in case no doubled or increased prizes as listed in the Special Notice are won, because any portion of the added $17,500 which is not used in paying doubled and increased prizes will be used for extra prizes to be added after the 500th Prize. Thus, the entire amount must be paid out in prizes in one form or another.

Awaiting receipt of your Prize Eligibility Form in an early mail, and wishing you all success in the contest, consistent with fairness to all, believe me to be.

Most sincerely yours,

FACTS MAGAZINE,
By JUDITH S. JOHNSON,
Contest Editor.

JSJ : aw.
Encl.

219 Supreme Court of the United States

Order allowing certiorari

Filed April 28, 1947

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

220 In the Supreme Court of the United States

Stipulation as to printing of the record

Filed August 19, 1947

Subject to this Court's approval, it is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that for the consideration of this case on the writ of certiorari to the United States Court of Appeals for the District of Columbia, granted April 28, 1947, the printed record may consist of the following:

I. Transcript of Record in District Court.

Pages	
1–22	Complaint for Injunction.
24	Letter from Contest Editor, dated July 3, 1945 (Exhibit B to complaint).

25–26 Letter from Contest Editor, dated August 15, 1945 (Exhibit C to complaint).
27–29 Letter from Contest Editor, dated August 17, 1945 (Exhibit D to complaint).
30–31 Letter from Contest Editor, dated August 18, 1945 (Exhibit E to complaint).
32–34 Letter from Solicitor of Post Office Department, dated June 26, 1945, enclosing specification of charges (Exhibit F to complaint).
35 Fraud order issued by Postmaster General, dated October 1, 1945 (Exhibit G to complaint).
221 36–48 Affidavit of Henry Walsh Lee, dated October 2, 1945.
55–57 Affidavit of Vincent M. Miles, Solicitor of the Post Office Department, dated October 16, 1945, in opposition to motion for preliminary injunction.
68–89 Memorandum for the Postmaster General Embodying a finding of fact and recommending the issuance of a fraud order, dated September 17, 1945 (Exhibit A–8 to affidavit of Vincent M. Miles).
92–93 Affidavit of John J. Gregory, dated October 8, 1945.
94–95 Order of Justice Holtzoff, dated October 19, 1945, continuing stay.
96 Motion of the defendant to dismiss the complaint or, in the alternative, for summary judgment.
97 Affidavit of Daniel B. Maher in support of defendant's motion for summary judgment.
98–99 Plaintiffs' motion for summary judgment.
100–101 Affidavit of Leonard S. Melrod, dated October 19, 1945.
102–113 Opinion of Justice Holtzoff, filed November 15, 1945.
114–115 Order of Justice Holtzoff, filed November 27, 1945, continuing impounding order.
116–117 Judgment granting permanent injunction, filed November 27, 1945.

II. Printed Record used for purposes of petition for certiorari.

110 Minute entry of argument in Court of Appeals.
111–119 Opinion of Court of Appeals.
120 Judgment of Court of Appeals.

III. Transcript of proceedings before Solicitor of Post Office Department.

(1) Those parts of testimony of Post Office Inspector Francis D. Boyle set forth at pp. 86–105 of printed record before Supreme Court on petition for certiorari.

(2) Those parts of testimony of Paul Sarazen attached hereto which are found on pp. 136, 148–150 of the Transcript of Proceedings before the Solicitor of the Post Office Department.

222 IV. Exhibits introduced at hearing before Solicitor of Post Office Department.

Gov. Ex. 1–B	Sunday News, April 1, 1945, p. 5.
Gov. Ex. 2	Advertising for All-American Puzzle Contest, appearing in "The American Weekly," August 16, 1942.
Gov. Ex. 2–A	Advertisement for All-American Puzzle Contest appearing in Columbia, South Carolina, newspaper, "The State," August 16, 1942.
Gov. Ex. 2–E	Form letter from Contest Editor.
Gov. Ex. 2–F	Letter from Contest Editor, dated January 5, 1943.
Gov. Ex. 2–F–1	"Official Notice," containing tie-breaking puzzles, pp. 1 and 2.
Gov. Ex. 2–G	Letter from Contest Editor, dated February 17, 1943.
Gov. Ex. 2–G–1	"Final Tie-Breaking Puzzles," p. 1.
Gov. Ex. 2–H	Letter from Contest Editor, dated April 16, 1943.
Gov. Ex. 2–I	Letter from Contest Editor, dated April 23, 1943.
Gov. Ex. 2–K–3	Form letter used in answering inquiries of contestants.
Gov. Ex. 2–J	Announcement of winners of All-American Contest.
Gov. Ex. 3	Letter from Contest Editor.
Gov. Ex. 4	Letter from Contest Editor to "All Contestants."
Gov. Ex. 5	Letter from Contest Editor to "Dear Friend."
Gov. Ex. 6	Letter from Contest Editor to "Dear Friend."
Gov. Ex. 7, 7–A to 7–F	Letter from Contest Editor to "Dear Friend" enclosing a mimeographed set of standard replies for the answering of questions asked by contestants.
Gov. Ex. 8	Letter from Contest Editor.
Gov. Ex. 9	Letter from Henry Walsh Lee to "Dear Contestant."
Gov. Ex. 10	Letter from Adele M. Beckman, dated August 28, 1945.
Gov. Ex. 10–C	Letter from Contest Editor to Mrs. Beckman, dated July 3, 1945.
Gov. Ex. 10–D	Letter from Contest Editor to Mrs. Beckman, dated July 5, 1945.
Gov. Ex. 10–E	Letter from Contest Editor to Mrs. Beckman, dated July 6, 1945.

223 Gov. Ex. 10–F Letter from Mrs. Beckman to Contest Editor, dated July 12, 1945.

Gov. Ex. 10–G Letter from Contest Editor to Mrs. Beckman, dated August 15, 1945.

Gov. Ex. 10–H Letter from Contest Editor to Mrs. Beckman, dated August 16, 1945.

Gov. Ex. 10–I Letter from Contest Editor to Mrs. Beckman, dated August 17, 1945.

Gov. Ex. 10–J Appendage for form for specifying prize eligibility.

Gov. Ex. 10–K Letter from Contest Editor to Mrs. Beckman, dated August 18, 1945.

Gov. Ex. 11–C Form for specifying prize eligibility.

Gov. Ex. 11–F Letter from Contest Editor to Martin Wohl, dated August 16, 1945.

Gov. Ex. 12–A Letter from Contest Editor to Mrs. A. D. Mott, dated July 3, 1945.

Gov. Ex. 12–B Special announcement of contest for those contestants who did not solve correctly the original group of puzzles.

Gov. Ex. 12–D Letter from Contest Editor to Mrs. A. D. Mott, dated July 6, 1945.

V. Order granting certiorari.

VI. This stipulation.

It is further stipulated and agreed that the parties may refer in briefs and oral argument to any portions of the original transcript of record and exhibits filed with this Court which are not contained in the record as printed pursuant to this stipulation, in the same manner as if they had been printed in full.

Dated this 7th day of August 1947.

Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General.

Dated this — day of August 1947

Burdette M. Asbill,
BURDETTE M. ASBILL,
Of counsel for Respondents.
By JOHN W. BURKE, Jr.,

[File endorsement omitted.]

[Endorsement on cover:] File No. 51972. U. S. Court of Appeals, District of Columbia. Term No. 50. Robert E. Hannegan, Individually and as Postmaster General of the United States, Petitioner vs. Read Magazine, Inc., et al. Petition for a writ of certiorari and exhibit thereto. Filed March 7, 1947. Term No. 50 O. T. 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947

FILE COPY

MAR 7 1947
CHARLES ELMORE CROPLEY

No. 1108 50

In the Supreme Court of the United States

OCTOBER TERM, 1946

ROBERT E. HANNEGAN, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, PETITIONER

v.

READ MAGAZINE, INC., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1108

ROBERT E. HANNEGAN, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, PETITIONER

v.

READ MAGAZINE, INC., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Acting Solicitor General, on behalf of the Postmaster General of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia, entered in the above-entitled case on December 9, 1946.

OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia (R. 75–83) is reported at 63 F. Supp. 318. The majority and dissenting opinions in the Court of Appeals (R. 111–119) are reported in 158 F. 2d 542.

JURISDICTION

The judgment of the Court of Appeals was entered on December 9, 1946 (R. 120). The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, in a suit to enjoin a fraud order issued by the Postmaster General on the ground that respondents were engaged in conducting a scheme or device for obtaining money through the mails by means of false or fraudulent pretenses, representations, or promises, a court may substitute its judgment for that of the Postmaster General, where it cannot properly be decided that, under the undisputed facts and the inferences which may be drawn therefrom, there was no reasonable basis for the Postmaster General's order.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra*, pp. 20–22.

STATEMENT

On October 1, 1945, the Postmaster General found, "upon evidence satisfactory to him," that respondent Facts Magazine and certain of its officers and agents were engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses

in violation of Sections 3929 and 4041 of the Revised Statutes, as amended, and issued a fraud order pursuant to the provisions of those sections (R. 27).

Respondent Facts Magazine, a part of a somewhat involved corporate structure,[1] sponsored and respondent Publishers Service Company promoted[2] a "puzzle" contest, commencing in April 1945, which is the subject of the Postmaster General's fraud order, and known as the "Hall of Fame Contest" (R. 31, 65). This contest, respondents contended, was conducted for the purpose of promoting the sale of books published by respondent Literary Classics, Inc. (R. 42, 65). The Hall of Fame Contest was nationally advertised in newspapers and periodicals and was invariably referred to and designated as a "Puzzle Contest" (R. 31, 65; see photostatic copy of advertisement, R. 30–31).

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[1] Facts Magazine is a division of Read Magazine, and the latter, as is also another corporation known as Literary Classics, Inc., is a subsidiary of Publishers Service Company, a New York corporation which has been engaged in conducting contests for newspapers, publications, and other customers (R. 30, 64–65, 87–88). The officers of these parent and subsidiary corporations are approximately the same (R. 29, 30, 88).

[2] Since 1941, Publishers Service has largely confined its contest promotional efforts to those contests which were sponsored by itself directly or through its subsidiaries (R. 31). Such contests included the so-called Music Appreciation Contest conducted in 1941–1942 by Music Appreciation, Inc., a subsidiary; All-American Contest in 1942–1943; and Read Magazine Contest in 1943–1944 (R. 31).

The advertisement stated that $17,500 was to be distributed to the winners of the puzzle contest,[3] which was to consist of 80 rebus puzzles divided into 20 series of 4 puzzles each.[4] To qualify for a prize, it was required that fifteen cents be enclosed with the solutions for each of the 20 series of puzzles. Thus, by the termination of the contest on June 16, 1945 (R. 42), a contestant would have paid a total of $3. Those who submitted "a complete Group of solutions for this contest" were to receive a book[5] (R. 43).

Approximately 190,000 contestants initially entered the contest and 90,000 completed the first series (R. 32, 43). Of these 90,000, more than 35,000 submitted correct solutions, with the result that no prizes were awarded (R. 32, 43). This vast number of ties was expected and was in line with similar past experiences of respondents in

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[3] The $17,500 of prize money was to be divided into 500 cash prizes. First prize was $10,000; 2nd prize, $2,000; 3d prize, $1,000; 4th prize, $500; 5th, 6th, and 7th prizes, $250 each; 8th prize, $150; 9th and 10th prizes, $100 each; the next 90 prizes, $10 each; and the next 400 prizes, $5 each.

[4] A rebus puzzle consists of a series of pictures of objects to be identified. By addition and subtraction of letters in the names identifying the objects, the solution of the puzzle is obtained (R. 65).

[5] The book alleged to have been distributed was *The Way of All Flesh* by Samuel Butler (R. 43).

conducting the All-American puzzle contest* (R. 32, 93, 97). The 35,000 persons who tied for first place in the Hall of Fame contest neither knew nor had any way of finding out how many others had also tied, for the rules of the contest provided that "the sponsors will not make known the number of persons competing in any phase of the contest, irrespective of how large or how small that number may be" (R. 30–31).

Rule 9 of the contest, printed in the advertisement in small type, provides, among other things, the procedure in the event there are ties. It is there stated (R. 30–31):

> * * * In case of ties, if two or more persons tie in submitting the correct solutions, then the first two or more prizes will be reserved for those contestants and will be awarded in the order of accuracy of the submissions of those contestants to a first, and if necessary, a second, tie-breaking group of puzzles, divided into Series exactly like the first Group. In case a second tie-breaking Group of puzzles is necessary, contestants eligible to solve same will be required to accompany their solutions to this second tie-breaking Group of puzzles

*In that contest, in which Publishers Service received through the mails approximately $1,500,000 and in which about $40,000 was paid out in prize money, 132,000 persons completed the puzzles, of whom approximately 95,000, or about 72 per cent, correctly solved all the puzzles and thus tied for first place (R. 32, 92, 96).

with a letter of not more than 200 words on the subject: "The Puzzle I Found Most Interesting and Educational in This Contest." All tie-breaking Series must be qualified in accordance with the provisions of Rule No. 8. Only in case ties exist after such final tie-breaking puzzles have been checked will the letters be considered, and in that event they will be judged on the basis of originality in description and general interest.

The first tie-breaker contest consisted of 80 simple rebus puzzles, divided into 20 series of four each, and again required the payment of 15 cents for each series, or a total of $3.00.[1] Each contestant thereupon received a copy of Jane Aus-

[1] Concerning the tie-breaking puzzles, the Solicitor of the Post Office Department found (R. 33):

"The circular containing these 'Tie-Breaker' puzzles now states the fact that should have been clearly set forth by the promoters at the outset, namely, that the entrant is required to pay an additional $3.00 for the privilege of submitting solutions to the 'Tie-Breaking' puzzles in order to remain in the contest (Gov. Ex. 10–F–6). He is also advised that upon payment of such fee he will 'receive the August selection of the Literary Classics Book Club.' The Club is simply a term used by the respondents, and no club exists in fact except for the purposes of exploiting the participants in this contest. The so-called 'Tie-Breaker' puzzles are as simple and as easy to solve as those contained in the original booklet of 'ALL 80 PUZZLES.' This appears to be motivated by the promoters' desire for as many ties as possible with a correspondingly larger number of additional second tie-breaker fees and double and quadruple prize entry fees which together with the original $3.00 fee may total as high as $45.00 per contestant."

ten's *Pride and Prejudice* published by Literary Classics, Inc. Of the approximately 35,000 who participated in the tie-breaker contest, 27,000 successfully solved all of the puzzles and were thus still tied for first place and thus became eligible to compete in a second tie-breaking contest to complete which would necessitate the payment of another $3.00. With this second tie-breaker series of puzzles the contestants were to submit a letter on the subject "The Puzzle I Found Most Interesting and Educational in This Contest," but which letter was to be considered "only in case ties exist."[8] With reference to the present puzzle contest at this stage, the Solicitor of the Post Office Department found (R. 33–34):

> Throughout the contestant's participation in this so-called "puzzle contest" up to this stage thereof, the fiction is maintained that the prizes may be won by those who correctly solve all of the simple rebus puzzles sent them by the promoters. However, the evidence in this case shows that beginning with the year 1941 (since which time all of the puzzle contests conducted by the Pub-

[8] That there would have been ties at the conclusion of the second tie-breaker contest would seem inevitable. In the All-American contest conducted by respondents, of the 95,000 persons who successfully solved the first series of tie-breaker puzzles, 77,000 actually participated in the second tie-breaker series and submitted essays (R. 92). Of these 77,000 persons, 55,000 correctly solved all the puzzles and had their essays judged and the prizes accordingly were distributed on the basis of the essays (R. 93).

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lishers Service Company have been solely for the benefit of that company and its subsidiaries) none of the rebus contests promoted by Mr. Sarazen and his associates have been won by the solution of the puzzles alone. Prior to that time contests were operated by this firm only as promotional schemes for other interests. The Music Appreciation, All American, and Read contests, which also were presented to the public as rebus puzzle contests, were finally decided not upon the basis of correct solutions to the puzzles by one person or by a number of persons submitting a lesser number of correct solutions than the first prize winner. All of said contests, which Mr. Sarazen testified were similar in pattern to the one here involved, were finally decided upon the basis of the best letter or essay written by the ultimately successful contestant. It was freely admitted at the hearing in this case that respondents anticipate and, in fact, planned that the current so-called "Hall of Fame Puzzle Contest" will similarly be decided upon the basis of the best letter written and not upon the basis of the correct solutions of the puzzles. It is therefore apparent from the evidence in this case, and I so find, that respondents knowingly and falsely represented to persons solicited to participate in the "Hall of Fame Puzzle Contest" that they could and would win the prizes offered by submitting the most correct solutions to the "ALL 80

PUZZLES" and later to the tie-breaking puzzles, whereas, in truth and in fact, as they well knew, such representations were untrue and this contest can only be won by solving all the puzzles and, in addition, writing what will finally be adjudged the best letter on the subject "The Puzzle I Found Most Interesting and Educational in This Contest." In other words, the contest is one in which the winners will be those who are the best letter writers.

The fact that the contest might be decided by a best letter is mentioned in the official rules only as a remote contingency, whereas, in truth, it was an inevitable certainty from the very beginning of the contest, as the respondents well knew.

The Hall of Fame Puzzle Contest was not concluded for, after the Post Office Department had received complaints from participants in the contest and had held hearings, the Postmaster General, referring to the Solicitor's findings, issued the fraud order here involved on October 1, 1945, prior to the completion of the second tie-breaking series (R. 27, 104, 116).

On October 2, 1945, respondents filed a complaint in the United States District Court for the District of Columbia, naming Robert E. Hannegan, individually and as Postmaster General of the United States as defendant, alleging that the "fraud order now sought to be enjoined was not fairly arrived at, has no substantial evidence to

support it, and is palpably wrong and therefore arbitrary" (R. 50). Respondents prayed for temporary relief and for the issuance of a permanent injunction enjoining defendant, his agents, servants and employees from (a) directly or indirectly doing, or attempting to do, any act or thing in pursuance of the fraud order or enforcing or attempting to enforce the fraud order and (b) from in any way interfering with the normal conduct of respondents' business as the consequence of the issuance of the fraud order (R. 53). The Postmaster General filed a motion to dismiss the complaint or, in the alternative, for summary judgment (R. 73). The respondents likewise filed a motion for summary judgment (R. 74). The district court while stating that "the advertisement is by no means a model of clarity and lucidity," that "It is diffuse and prolix, and at times somewhat obscure," and that "Many of its salient provisions are printed in rather small type," nevertheless held that "The conclusion is inevitable that there is no evidence to support the finding of fact on which the fraud order is based and that, therefore, the plaintiff is entitled to a permanent injunction against the enforcement of the order" (R. 82). On appeal, the judgment of the district court was affirmed, Justice Edgerton dissenting (R. 111–119).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In failing to hold that the advertisements of the contest falsely or fraudulently represented that the contest was a "puzzle" contest whereas it was known and planned to be a letter writing contest.

2. In holding that the advertisements for the Puzzle Contest "fairly urged contestants to read the Rules and that the Rules stated fairly, in style of type, placement, and terms, what was proposed."

3. In holding that there was "no ambiguity in or departure from the proposals stated."

4. In holding that "a finding of false pretenses, representations, or promises could not properly be made" in this case and that such a conclusion was arbitrary and capricious.

5. In failing to hold that the Postmaster General could reasonably find that respondents' advertisement constituted a false or fraudulent pretense, representation, or promise.

6. In failing to hold that the district court should have granted petitioner's motion to dismiss the complaint or, in the alternative, for summary judgment.

7. In affirming the judgment of the district court.

REASONS FOR GRANTING THE WRIT

The basic facts in the instant case are undisputed. They consist of the advertisements for the "puzzle" contest, the prior experience of respondents in conducting similar contests, and the fact that the contest here involved followed the general pattern which respondents anticipated. Sections 3929 and 4041 of the Revised Statutes (Appendix, pp. 20–22) authorize the Postmaster General, "upon evidence satisfactory to him," that a scheme or device for obtaining money through the mails by means of false or fraudulent pretenses, representations or promises is being conducted, to issue a "fraud order." On the basis of the admitted facts and the inferences which he drew therefrom petitioner concluded that the "puzzle" contest here involved was a prohibited device or scheme and issued the corresponding "fraud order." The court below, however, substituted its judgment for that of the Postmaster General as to what the undisputed facts reasonably tended to show and the inferences to be drawn from those facts and, finding that its conclusions differed from those of the Postmaster General, held that his findings were arbitrary and capricious and that the fraud order based thereon was invalid. In so holding we submit that the court below has decided an important question of federal law in a manner contrary to the plain mandate of Sections 3929 and 4041 of the Revised

Statutes and inconsistent with applicable decisions of this Court and lower federal courts in the field of administrative law.

1. As stated by Justice Edgerton in his dissenting opinion (R. 116):

> * * * if [respondents] intended to convey to all or any of their readers either (1) the idea that the contest was merely a puzzle contest or (2) the idea that there was a substantial chance that prizes would be won merely by solving puzzles [respondents] made a false pretense. The fraud order must be sustained if the Postmaster General could reasonably find either of those intents. Either is plainly material, since a person who is willing to risk his money in a puzzle contest may be unwilling to risk it in a letter-writing contest and a person who is willing to face a possibility that puzzles may not be decisive may be unwilling to face a certainty that they will not be decisive.

The facts before the Postmaster General fully support his finding that respondents were conducting a scheme or device for obtaining money through the mails by means of false or fraudulent pretenses or representations. The scheme was held out to be a puzzle contest but that was exactly what it was not. Nor did respondents ever intend to allow it to become one. The "contest," which was clearly intended to be a money making

device[9] (R. 33, 34, 38, 39), depended for its financial success not only upon a high number of entrants, but upon a high number of contestants surviving all tie-breaking contests (R. 33, 38). Respondents had every reason to believe, from past experience, that if the "puzzles" were kept sufficiently simple, thousands of contestants would survive the final tie-breaking "puzzle" contest, and there is no suggestion in the instant case that the "puzzles" were not being kept sufficiently simple to bring about the desired result.[10] It was anticipated and planned that thousands of contestants would be induced to send in additional fees for tie-breaking contests and that the prizes would be awarded as a result of a letter writing contest and not by the successful solution of the "puzzles." In these circumstances, the finding of the Postmaster General that the scheme was falsely represented to be a "puzzle" contest, whereas in fact it was a letter writing contest, cannot be said to be without support in the record. That his finding was correct as well as reasonable is clearly demonstrated in Justice Edgerton's dissenting opinion, to which we refer for a more detailed statement of our position.

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[9] The statement in the advertisements that the contest was being conducted as a means of popularizing the Literary Classics Book Club is false. No such club existed (R. 33).

[10] Approximately 27,000 contestants solved the first tie-breaking contest (R. 33).

2. The court below, although referring to the substantial evidence rule, disregarded the factual inferences drawn by the Postmaster General in favor of conclusions of its own. The decision is thereby inconsistent with the many cases in which this Court has held "that the inferences from the evidence are to be drawn by the [administrative agency] and not by the courts". *Medo Corp.* v. *National Labor Relations Board*, 321 U. S. 678, 681–682n; *Corn Products Refining Co.* v. *Federal Trade Commission*, 324 U. S. 726, 739; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73; *Federal Trade Commission* v. *Pacific States Paper Trade Association*, 273 U. S. 52, 63; *National Labor Relations Board* v. *Southern Bell Telephone Co.*, 319 U. S. 50, 60; *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105, 107; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 271; *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297, 307. The following statement of the Court in *Federal Trade Commission* v. *Algoma Lumber Co., supra*, is especially pertinent here (291 U. S. at p. 73):

> The Court of Appeals, though professing adherence to this mandate, honored it, we think, with lip service only. In form the court determined that the finding of unfair competition had no support whatever. In fact what the court did was to make its own

appraisal of the testimony, picking and choosing for itself among uncertain and conflicting inferences. Statute and decision (*Federal Trade Comm'n v. Pacific States Paper Trade Assn.*, 273 U. S. 52, 61, 63) forbid that exercise of power.

Courts, of course, are governed by the same principles in reviewing orders of the Postmaster General as in reviewing orders of other agencies. *Leach* v. *Carlile*, 258 U. S. 138; *Bates & Guild Co.* v. *Payne*, 194 U. S. 106; *Farley* v. *Simmons*, 99 F. 2d 343 (App. D. C.), certiorari denied, 305 U. S. 651; *Putnam* v. *Morgan*, 172 Fed. 450 (C. C. S. D. N. Y.). The court below did not suggest the contrary.

Despite its general reference to the substantial evidence rule, the court below seemed to determine for itself what "a reasonable reader" (R. 115) would believe. That this may not be the proper substantive approach is indicated by *Federal Trade Commission* v. *Standard Education Society*, 302 U. S. 112, which also involved a scheme likely to be most successful with persons who did not analyze representations with great care.[11] This

[11] In this connection, Justice Edgerton stated (R. 119), citing the *Standard Education* case:

"The court finds that no reasonable reader of the advertisement would think that prizes might be won merely by solving puzzles. Obviously this finding of fact seems to me erroneous. Many readers lacked the knowledge, based on experience with similar contests, which appellees had and this court now has. Moreover, I think the court's finding is

type of scheme is obviously likely to succeed with those, perhaps less reasonable, readers who do not understand or appreciate the implications of small print.

On a number of occasions this Court has regarded the departure by a circuit court of appeals from the accepted principles of judicial review and its substitution of its views for those of an administrative agency as sufficient to warrant the granting of a writ of certiorari. *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 586; *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 208; *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105; *National Labor Relations Board* v. *Automotive Maintenance Machinery Co.*, 315 U. S. 282; *National Labor Relations Board* v. *Southern Bell Telephone Co.*, 319 U. S. 50. We believe that certiorari should be granted in the instant case for the same reason.

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immaterial. To say that it invalidates the fraud order is equivalent to saying that if a scheme would not deceive reasonable men, to whom it is not primarily addressed, it may legally be used to take money from children and other simple people. The advertisement is primarily addressed to such people, since they are the ones likely to be attracted by crude and easy puzzles. 'The fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced.'"

3. The questions presented in the instant case are of general significance. On the merits the decision will permit shrewd and unscrupulous advertisers to take advantage of a large portion of the public by stating facts accurately but in a manner deliberately calculated to give an erroneous impression. Moreover, most suits seeking to enjoin officials of the Federal Government, and all suits against the Postmaster General, may be maintained only in the District of Columbia, the official residence of the officers concerned. Under many statutes aggrieved parties have the option of bringing proceedings to review administrative decisions in the Court of Appeals for the District of Columbia.[12] The decisions of the Court of Appeals for the District of Columbia thus assume major importance in this field. And the failure of the court below, so strategically placed for the review of administrative orders, in this and other cases to honor the doctrine that courts are not to substitute their views for those of administrative officials is even of greater importance. Cf. *WOKO, Inc.* v. *Federal Communications Commission,* 153 F. 2d 623 (App. D. C.), reversed, No. 65, this Term (December 9, 1946); *Lamb* v. *Patterson,* 154 F. 2d 319 (App. D. C.), reversed, No. 229,

[12] E. g., National Labor Relations Act, 29 U. S. C. 106f; Fair Labor Standards Act, 29 U. S. C. 210; Securities Act, 15 U. S. C. 77i (a); Public Utility Holding Company Act, 15 U. S. C. 79x (a).

this Term (January 20, 1947); *Santa Fe Pac. R. Co.* v. *Ickes,* 153 F. 2d 305 (App. D. C.), reversed, Nos. 97 and 98, this Term (February 3, 1947); *Agnew* v. *Federal Reserve Board,* 153 F. 2d 785 (App. D. C.), reversed, No. 66, this Term (January 6, 1947); *Liberty Mut. Ins. Co.* v. *Cardillo,* 154 F. 2d 529 (App. D. C.), reversed, No. 265, this Term (March 10, 1947).

In order to correct a similar trend this Court granted certiorari in *National Labor Relations Board* v. *Waterman Steamship Corp.,* 309 U. S. 206, 208. We submit that the decision below constitutes a departure from accepted legal principles and should not be permitted to stand without review by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

GEORGE T. WASHINGTON,
Acting Solicitor General.

MARCH 1947.

APPENDIX

R. S. § 3929 (39 U. S. C. 259), as amended by the Act of September 19, 1890, c. 908, § 2, 26 Stat. 465, 466, provides as follows:

> SEC. 3929. The Postmaster-General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme or device for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, instruct postmasters at any postoffice at which registered letters arrive directed to any such person or company, or to the agent or representative of any such person or company, whether such agent or representative is acting as an individual or as a firm, bank, corporation, or association of any kind, to return all such registered letters to the postmaster at the office at which they were originally mailed, with the word "Fraudulent" plainly written or stamped upon the outside thereof; and all such letters so returned to such postmasters shall be by them returned to the writers thereof, under such regulations as the Postmaster-General may prescribe. But nothing contained in this section shall be so construed as to authorize any postmaster or other person to open any letter not addressed to himself. The public advertisement by such person or company so

conducting such lottery, gift enterprise, scheme, or device, that remittances for the same may be made by registered letters to any other person, firm, bank, corporation, or association named therein shall be held to be prima facie evidence of the existence of said agency by all the parties named therein; but the Postmaster-General shall not be precluded from ascertaining the existence of such agency in any other legal way satisfactory to himself.

R. S. § 3929 was further amended by the Act of March 2, 1895, c. 191, § 4, 28 Stat. 963, 964, to cover not only registered letters but all letters or other matter sent by mail:

SEC. 4. That the powers conferred upon the Postmaster-General by the statute of eighteen hundred and ninety, chapter nine hundred and eight, section two, are hereby extended and made applicable to all letters or other matter sent by mail.

R. S. § 4041 (39 U. S. C. 732), as amended by the Act of September 19, 1890, c. 908, § 3, 26 Stat. 465, 466 provides as follows:

SEC. 4041. The Postmaster-General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, forbid the payment by any postmaster to said person or company of any

postal money-orders drawn to his or its order, or in his or its favor, or to the agent of any such person or company, whether such agent is acting as an individual or as a firm, bank, corporation, or association of any kind, and may provide by regulation for the return to the remitters of the sums named in such money-orders. But this shall not authorize any person to open any letter not addressed to himself. The public advertisement by such person or company so conducting any such lottery, gift enterprise, scheme, or device, that remittances for the same may be made by means of postal money-orders to any other person, firm, bank, corporation, or association named therein shall be held to be prima facie evidence of the existence of said agency by all the parties named therein; but the Postmaster-General shall not be precluded from ascertaining the existence of such agency in any other legal way.

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No. 60

In the Supreme Court of the United States

OCTOBER TERM, 1947

ROBERT E. HANNEGAN, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, PETITIONER

v.

READ MAGAZINE, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONER

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 50

ROBERT E. HANNEGAN, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, PETITIONER

v.

READ MAGAZINE, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia (R. 49) is reported at 63 F. Supp. 318. The majority and dissenting opinions in the Court of Appeals (R. 59, 63) are reported in 158 F. 2d 542.

JURISDICTION

The judgment of the Court of Appeals was entered on December 9, 1946 (R. 68). The petition for a writ of certiorari was filed on March 7, 1947 (R. 142), and was granted April 28, 1947

(R. 139). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the determination by the Postmaster General that respondents were engaged in conducting a scheme or device for obtaining money through the mails by means of false or fraudulent pretenses, representations, or promises is unsupportable on the basis of the undisputed facts and the inferences which the Postmaster General might reasonably draw therefrom.

STATUTES INVOLVED

The statutes involved, R. S. §§ 3929 and 4041, are set forth in the Appendix, *infra*, pp. 45–47.

STATEMENT

"Facts," magazine is published, along with Read Magazine, by Read Magazine, Inc., a subsidiary of Publishers Service Company, a publishing company which, in addition to its publishing activities, has been engaged in conducting contests for newspapers, publications, and other customers since about 1928 (R. 35; R. 1, 70, 86, Tr. 133).[1] The officers of the parent and subsidiary

[1] "Tr." references are to the unprinted Transcript of the Proceedings before the Solicitor for the Post Office Department, which is a part of the record on file with the Court (R. 46). Only a portion of this transcript is contained in the printed record, but the parties have stipulated that they may refer to unprinted portions (R. 142).

corporation are approximately the same (R. 35; R. 70, Tr. 87–88). Since 1941, Publishers Service has largely confined its contest promotional efforts to those contests which were sponsored by itself directly or through its subsidiaries (R. 35, Tr. 100–102).

Under date of June 26, 1945, the Solicitor of the Post Office Department transmitted to respondents a memorandum of charges alleging that "Facts" magazine, Henry Walsh Lee, as editor-in-chief, and Judith S. Johnson, contest editor, were engaged in conducting a scheme for obtaining money through the mails by means of false and fraudulent pretenses and representations that the contest was one in which the prizes would be awarded for the correct solutions of puzzles; that there was a probability that the contestant would become a prize winner merely by the submission of correct solutions to the first 80 puzzles; and that the only fees to be paid by a contestant were those submitted with the first series of puzzles (R. 21–22, 33). On September 4 and 5, 1945, a hearing was had upon the charges which had been preferred (R. 34). The Solicitor of the Post Office Department made findings of fact and recommendations that a "fraud order" should issue, and submitted them to the Postmaster General (R. 33–43), who approved them and issued an order barring the named respondents from receiving letters and other matter and postal

money orders pursuant to 39 U. S. C. § 259, 732 (R. 22–23).

The respondents here, Read Magazine, Inc., the corporation which publishes "Facts" magazine, Literary Classics, Inc. (a subsidiary corporation publishing books), Publishers Service Company (the top holding company), and Henry Walsh Lee and Judith S. Johnson, instituted this suit to enjoin the enforcement of the fraud order (R. 1–12). Both parties filed motions for summary judgment (R. 46–47). The district court granted the respondents' motion and issued an injunction (R. 57–58). The Court of Appeals for the District of Columbia affirmed, Mr. Justice Edgerton dissenting, holding the Postmaster General's finding upon the facts to be unsupported and arbitrary and capricious (R. 59–68).

The facts which may be considered in determining whether the Postmaster General's order is adequately supported appear in the record before him, which is incorporated in the present record.[2]

[2] The record in this case also contains affidavits submitted in support of and in opposition to the motion for summary judgment (R. 47, 23, 48; 46, 43, 31). But whether the Postmaster General's decision is supported by evidence is obviously to be determined solely on the basis of the record before him and respondents are not entitled to introduce in court evidence *de novo* on this issue. *National Broadcasting Co.* v. *United States*, 319 U. S. 190, 227; *Tagg Brothers and Moorhead* v. *United States*, 280 U. S. 420. In any event, the affidavit evidence does not alter the picture in any material way.

SUMMARY OF THE EVIDENCE

This case involves the "Hall of Fame Puzzle Contest" conducted by "Facts" magazine. This contest was admittedly patterned (R. 71–72, 86–87) closely upon an earlier contest conducted by respondents, the "All-American Puzzle Contest", as well as on other similar contests (R. 38, 70–71, Tr. 102), and it is necessary to start with that contest in order to understand the respondents' scheme.

The "All-American Puzzle Contest".—The All-American Puzzle Contest was conducted by respondents in 1942–1943 with a series of prizes to be awarded to the successful contestants (R. 35, 71). The contest presented 120 rebus puzzles[3] divided into series of six each. For each series which contestants submitted, they were required to pay 15 cents. Rule 6 of the All-American contest provided that in the event that two or more persons tied, "then the first two or more prizes would be reserved" and the prizes subsequently awarded to the winner of a first, and if necessary a second tie-breaking group of puzzles, divided in series exactly like the first. The second group of tie-breaking puzzles was to be accompanied by a letter of 200 words on the subject "My Choice for American Hero No. 1." Only in cases of ultimate

[3] A rebus puzzle consists of a series of pictures of objects to be identified. By addition and subtraction of letters in the names identifying the objects, the solution of the puzzle is obtained (See Ex. opp. R. 36).

ties were the letters to be judged and the prizes awarded on the basis of the letters. (Ex. 2, opp. R. 87.) Upon the conclusion of the contest, each contestant who had completed a full group of puzzles received a book (Ex. 2, opp. R. 87).

352,000 people entered the contest, 132,000 submitted answers to all 120 puzzles and over 95,000 submitted correct solutions (R. 74). Of the 95,000 participants in the first tie-breaking set of puzzles, 77,000 solved all the puzzles correctly and participated in the second run-off. Of these, 55,000 correctly solved all puzzles and had their letters judged, and prizes were awarded on the basis thereof (R. 74).

Although the rules accurately described the tie-breaking procedures, the original letters and other literature referred to the contest only as a puzzle contest (Ex. 2–E, F, R. 87, 88). Letters written to the 95,000 contestants who had tied originally and who had tied in the first group of tie-breakers were clearly designed to create the impression that there was a possibility that the prizes might be awarded on the basis of a solution of the puzzles alone. Thus the letters to those who became eligible for the first tie-breaking contest stated (Exhibit 2–F, R. 88):

> In receiving congratulations you will be interested in knowing that more than one-half of those who started in the contest lost out or dropped out by the eighth week, and that more than 24,000 contestants from

> that point on lost out either by submitting one or more incorrect solutions or by dropping out of the contest entirely. The puzzles which proved most difficult were Nos. 17, 41, 60, 66, and 71, although practically all of the 120 puzzles were incorrectly named by many contestants during the course of the contest.

The announcement of the first tie-breaking puzzles sent out at the same time stated (Exhibit 2–F–1, opp. R. 89; see also 2–G–1, opp. R. 91):

> Do not be discouraged if you fail to solve one or more of these puzzles, for remember, they are intended to be tie-breaking puzzles. There is always the possibility that somebody else may miss the same puzzle or more puzzles than you missed. *You can still win the higher prize if you have the higher total score, no matter how many puzzles you may have missed.* [Italics supplied.]

And the announcement which introduced the second tie-breaking group of puzzles stated (Exhibit 2–G–1, opp. R. 91): "This letter * * * will be taken into consideration ONLY in case ties still exist AFTER solutions to the final tie-breaking group of puzzles have been checked" (capitals in original).

In another letter it was stated that although the number tied would not be announced, the contestants would be informed of the "exact number of puzzles correctly solved by each winning con-

testant" (Exhibit 2-K-3, R. 95). All of these statements suggest that there was a reasonable chance that it would be unnecessary to resort to essays and that the winners might be determined on the basis of puzzles alone.

The contestants were required to pay an additional $3.00 for entering each tie-breaking series (R. 75). In addition, when the solutions to the second run-off contest had been submitted, respondents urged contestants to pay additional entry fees of $7.50 in order to be eligible for double prize winnings (R. 75). 44,000 out of 77,000 did so (R. 79).

Inasmuch as persons who believed—correctly—that they could solve the easy puzzles might not have remained in the contest and paid additional fees if they had known in advance that it was certain that they would have to compete in essay writing with many thousands of others, respondents' motive in implying that possibly essays would be unnecessary is obvious. The amount of prize money distributed in the contest was about $40,000 (R. 78). The total cost to the sponsors was approximately $1,250,000 and the total receipts approximately $1,450,000 (Tr. 168).

The "Hall of Fame Puzzle Contest".—The "Hall of Fame Puzzle Contest" was conducted in substantially the same manner as the "All-American Contest". The contest was extensively advertised as a puzzle contest and nothing else (R. 36; Exhibits opp. R. 36, 87). As appears from the ex-

hibits, the word "Puzzle" was emphasized in large letters and frequently. Some of the advertisements did not mention any possibility of ties or of letter writing but referred generally to the rules. (Ex. 1-B, opp. R. 87.) In other advertisements the rules themselves were printed, but nowhere else was there reference to anything but the original 80 puzzles (Exhibits opp. R. 36). The contest was to consist of 80 rebus puzzles divided into 20 series of 4 puzzles each. To qualify for a prize, it was required that fifteen cents be enclosed with the solutions for each of the 20 series of puzzles, or $3.00 altogether, in return for which each contestant was to receive an unidentified book "issued by the Literary Classics Book Club", a subsidiary of Read Magazine (Ex. 1, opp. R. 36).[4]

The puzzles differed from those in the "All-American", and earlier contests (R. 91) in that at the top of each puzzle was a descriptive guide line such as: "Represents the name of the inventor of the phonograph and electric light", with the answer showing spaces for a six-letter word (Puzzle No. 1); "Represents the name of a Republican President who became Chief Justice of the Supreme Court" (four letter word) (Puzzle No. 2); "Represents the name of a British king whose court is the setting of a book by Mark

[4] It was testified that the books are printed, bound and illustrated in a manner which makes them more attractive and costly than the ordinary current best seller (Tr. 181); they cost respondents 65 cents to 85 cents each (Tr. 166-177).

Twain" (six letter word) (Puzzle No. 3); "She was created from a man's rib" (three letter word) (Puzzle No. 64).[5] Ex. pp. 1, 3, opp. R. 36).

The advertising announced "500 Cash Prizes", ten ranging downwards from $10,000 to $100; 90 were of $10.00 and 400 were of $5.00 (Ex. opp. R. 36). The advertising did not state what respondents knew would be the fact, that $9.00 in entrance

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[5] In connection with these guide-lines Miss Fertel, Secretary-Treasurer of the respondent corporations and in charge of the details of the contest, was asked:

Tr. 188:

"Q. Will you tell me why they put the descriptive language at the top of each puzzle, as for example a Biblical name on puzzle number 48, series 12?

"A. Yes, sir. The captions were put at the tops of the puzzles in order to make the contest of more general interest because the contest is called a 'Hall of Fame' contest, and also in order to prove indubitably that there is only one possible solution to the puzzle."

Tr. 193:

"Q. Whose idea was it to put these descriptive phrases at the top of the rebus puzzles?

"A. We all decided that it would add more interest and intrigue and stimulation mentally to the puzzles to put the captions over them."

Tr. 190:

"Q. In puzzle No. 64 to which Mr. Mindel referred, the caption says 'She was created from a man's rib.' And at the bottom of the figures are three spaces for letters. Didn't you intend that to inform the contestant as to the answer to that puzzle?

"A. We did not intend to inform the contestant as to the answer of the puzzle. We intended it to identify absolutely who the name was that was represented in the puzzle.

"Q. For whose benefit?

"A. For everybody's benefit so that there could be no possible question as to the name represented by that puzzle."

fees would be necessary to qualify even for a $5.00 prize (R. 40, 75, 113).

The rules of the contest, which were included in some of the advertisements and which were sent to the contestants contained the following provisions (Ex. opp. R. 36):

> 8. To qualify for a prize, the contestant is required to accompany each Series of four solutions with 15 cents in coin. Each contestant who submits a complete Group of solutions for this contest qualified in accordance with the Rules will receive the book selected for the month of July by the Literary Classics Book Club. Any contestant who becomes eligible to submit, and who does submit, a Group of qualified tie-breaking solutions, will receive the following months Book Club selection. Entrants who for any reason drop out of the contest before sending in the complete Group of 80 solutions will receive a set of Quotations by Famous Statesmen.
>
> 9. Neatness will not count. Do not decorate your answers. Just submit your solutions in accordance with the rules. *In case of* ties, *if two or more persons tie* in submitting the correct solutions, then the first two or more prizes will be reserved for those contestants and will be awarded in the order of accuracy of the submissions of those contestants to a first, *and if necessary,* a second, tie-breaking group of puzzles, divided into Series exactly like the first Group. *In case a second tie-breaking*

Group of puzzles is necessary, contestants eligible to solve same will be required to accompany their solutions to this second tie-breaking Group of puzzles with a letter of not more than 200 words on the subject: "The Puzzle I found Most Interesting and Educational in This Contest." All tie-breaking Series must be qualified in accordance with the provisions of Rule No. 8. Only *in case* ties exist after such final tie-breaking puzzles have been checked will the letters be considered, and *in that event* they will be judged on the basis of originality in description and general interest. *In case of* final ties, duplicate prizes will be awarded. Upon entering the contest, the entrant is asked to realize that the sponsor anticipates that a large number of persons *may* enter the contest and that a large number *may* solve one, two or all three of the Groups of puzzles, and that the sponsors will not make known the number of persons competing in any phase of the contest, irrespective of how large or how small that number may be. FACTS Magazine reserves the right to offer contestants the opportunity to win increased prizes, or to offer consolation prizes or additional prizes at any time prior to the conclusion of the contest. [Italics supplied.]

Numerous letters sent to contestants during the first portion of the contest continued to speak of it exclusively as a puzzle contest containing "80 puzzles", without further mention of ties or

letters (Ex. 3, 4, 5, 6, 8, 9, R. 96–101, 110–112). A "mimeographed set of standard replies for the answering of questions asked by contestants" (Ex. 7, R. 101) clearly was designed to give the impression that there was a possibility that the contest might be completed without the necessity of more than 80 puzzles, saying (Ex. 7–B, R. 103):

> Q. If I solve all 80 puzzles correctly, will I get a prize?
>
> A. If you are the only person in the contest to correctly solve all 80 of the puzzles, then and in that event you will automatically be entitled to the first prize. However, if other persons also correctly solve 80 puzzles and thereby become tied with you, then the procedure as to the breaking of ties and the determination of winners follow the provisions as set forth in Rule No. 9 of the Official Rules to which you are referred now.

Approximately 190,000 contestants initially entered the contest, and 90,000 completed the first series (R. 37, 3–4). Of these 90,000, more than 35,000 submitted correct solutions, with the result that no prizes were awarded (*Ibid.*; Tr. 155).

Letters were sent to the successful contestants notifying them that they were eligible for the first tie-breaking group of puzzles, (Ex. 10–C; R. 113–114), and notifying all the losers that they could participate in a consolation contest con-

sisting of the tie-breaking puzzles, in which they were offered the same amount of prize money (Ex. 12–A, B, D; R. 134–139).[6] Exhibit 10 (C) (R. 114) advised contestants that "we feel sure you will be interested in knowing that many thousands of persons who competed against you either missed one or more of the puzzles or dropped out of the contest entirely. Among the puzzles which contestants found the more difficult were numbers 39, 40, 59, 63."

These letters were also designed to induce contestants to pay larger sums in return for a chance to double the prize. Respondents sent to tied contestants letters dated July 5, 1945 and July 6, 1945 (Ex. 10–D and 10–E, R. 115–118, respectively; cf. Ex. 11–A and 11–B unprinted), stating in the first letter (R. 115) that "you will be delighted to know that we are going to pay DOUBLE[7] the amount of the prizes originally offered in this contest as provided in the Eligibility Form which you will receive," and enclosing with the second letter (R. 116) a "Prize Eligibility Form" which permitted contestants, by subscribing for more books, the names of which were not given, to win double prizes. Although it was stated in the letters that "your eligibility to com-

[6] Respondents' complaint alleges that approximately 26,000 persons entered the consolation contest, and that approximately 12,250 solved all puzzles correctly and were eligible for further tie breaking puzzles (R. 5).

[7] Capitals in original, though not as reprinted in the Record by the Government Printing Office.

pete for the original prizes remains, regardless of whether you do or do not qualify for eligibility to compete for the higher prizes," (R. 115–116, 117) the letters were so worded that many contestants would be led to believe that such subscriptions were necessary in order to remain eligible to compete in the contest. (R. 39.) The letter of July 5, 1945, stated in the first paragraph (Ex. 10–D, R. 115):

> Under separate cover I am sending you a Form for Specifying Prize Eligibility. This form should be filled in and returned to us within 5 days after receipt by you if possible, and sooner if you can do so. It *must* become a part of your file in the contest. [Italics supplied.]

The first three paragraphs of the letter of July 6, 1945, stated as follows (Ex. 10–E, R. 116):

> You will find enclosed herewith the Prize Eligibility Form mentioned in my previous letter.
>
> This Prize Eligibility Form requires your signature in two places to enable you to become eligible to compete for as much as $20,000 or $15,000 as First Prize in accordance with the terms of the double prize offer, and in addition, provides the necessary spaces for signifying acceptance of the terms of the offer.
>
> This Form and any extensions applying to same *must* become a part of your file in the contest, and we will thank you to fill

in same and mail to us within five days after receipt by you if possible, or earlier if you can do so. [Italics supplied.]

To become eligible to compete for a first prize of $20,000, a payment of $12 for four books was necessary, and for a first prize of $15,000, a payment of $6 for two books was required (R. 39; Ex. 11–C, R. 130–132).

Of the approximately 35,000 who participated in the tie-breaker contest, 27,000 successfully solved all of the puzzles and were thus still tied for first place (R. 38, 41–42; Tr. 171, 155). They thereby became eligible to compete in a second tie-breaking contest, to complete which would necessitate the payment of another $3.00 (R. 41, 75). With this second tie-breaker series of puzzles, the contestants were to submit a letter on the subject "The Puzzle I Found Most Interesting and Educational in This Contest," but which letter was to be considered "only *in case* ties exist" (R. 41).

The successful contestants were advised that they could become eligible for quadruple prize money by payment of $24 for 8 months' subscription to the "Book Club" (R. 40; Ex. 10–G, H, I, J, K, R. 119–130). The procedure followed by respondents in their solicitations in connection with the double prize offer was substantially followed with respect to the quadruple prize device, except that instead of two letters being sent out contestants were barraged with a series of four

letters, on August 15, 16, 17, and 18, 1945 (*ibid.*; Ex. 11–F, R. 133, 11–I, K (unprinted). By purchasing a total of 8 books from respondents for $24 a contestant became eligible to compete for a $40,000 first prize (R. 40, 125–126). He could also become eligible to compete for an increased first prize, but of a lesser amount than $40,000, by purchasing a smaller number of books (*Ibid.*). These letters forwarding and discussing what was this time called the "Appendage for your Prize Eligibility" were worded as the earlier letters had been, in a manner that might lead contestants to believe they had to buy books to remain eligible for contest, since they were told (R. 130) that "the Appendage *must* become part of your file in the contest, and must be mailed back to us, postmarked before Midnight, Saturday, August 25th" [Italics supplied]. One of these letters for the first time indicated that a great many persons actually were tied (Ex. 10–G, R. 120). The contest was interrupted by the Post Office Department before the last tie-breaking group of puzzles could be sent out.

Since 1941 respondents have conducted a series of rebus puzzle contests of which the "Hall of Fame Contest" was the fourth. All were of a similar pattern (R. 38, Tr. 102).[8] Respondent

[8] Mr. Arter, president of respondent corporation, testified (Tr. 102):

"Q. And do you know that during your absence on war duty there were conducted this series of puzzle contests commencing with 'Music Appreciation' and then, as I under-

admitted that none of the puzzle contests conducted since 1941 have been decided on the basis of the solution of puzzles, but, on the contrary, in all of them, letters or essays have been written and considered and the prizes accordingly have been awarded on the basis of the best letters or essays (R. 38, 86–87). A contract was made in advance of the instant contest calling for a price of 10½ cents per letter for judging each of the tie-breaking letters, if any (Tr. 157).

The receipts for the contest at the time it was interrupted amounted to $767,441.90. Prizes to be paid amounted to $105,000, and the cost of books to be distributed $194,756.19. Other expenses brought the total cost, as calculated by one of respondents' officers, to $936,843.71 (Tr. 165–166),[9] which included $90,000 for salaries for re-

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stand it, followed by 'All-American', then followed by 'Read' and then followed by the current one; is that correct?

"A. That is right, sir.

"Q. All of them conducted for the benefit of the company or its subsidiaries?

"A. That is right.

"Q. And all of them in that time, all four of them, is it your understanding that all four of them followed a similar pattern?

"A. That is right."

[9] Miss Fertel testified (Tr. 165–166):

"The prizes total $105,000.00; the books $194,756.19; the puzzles and puzzle booklets $24,374.42; the advertising $120,240.95; printing and stationery $30,835.60; the filing and judging of puzzle solutions $80,592.27; mailing service $74,800.38; refunds to late entries among contestants $4,560.35; postage $113,641.63; freight, automobile and trucking $8,575.39; rent $14,330.21; electricity, telegraph, tele-

spondents' five officers (Tr. 175, 183). Whether there would have been an ultimate deficit or profit, and how much, would have depended on the extent to which the 27,000 remaining contestants subscribed more than the minimum $3.00 for the last tie-breaking group of puzzles in order to obtain multiple prize money.

On the basis of these facts the Postmaster General found *inter alia,* (R. 38–39):

> Throughout the contestant's participation in this so-called "puzzle contest" up to this stage thereof, the fiction is maintained that the prizes may be won by those who correctly solve all of the simple rebus puzzles sent them by the promoters. However, the evidence in this case shows that beginning with the year 1941 (since which time all of the puzzle contests conducted by the Publishers Service Company have been solely for the benefit of that company and its subsidiaries) none of the rebus contests promoted by Mr. Sarazen and his associates have been won by the solution of the puzzles alone. Prior to that time contests were operated by this firm only as promotional schemes for other interests. The Music Appreciation, All American, and

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phone, insurance, and bank charges $8,067.52; payroll and payroll taxes $114,603.98; general office expense, accounting, and auditing $18,028.19; supplies and packaging $2,405.21; art work, photostats, and copyrights $5,174.77; addressing and special correspondence $3,626.63; miscellaneous expense $8,076.70; detective services in guarding mail deliveries and opening mail $5,153.32. That makes a total of $936,843.71."

Read contests, which also were presented to the public as rebus puzzle contests, were finally decided not upon the basis of correct solutions to the puzzles by one person or by a number of persons submitting a lesser number of correct solutions than the first prize winner. All of said contests, which Mr. Sarazen testified were similar in pattern to the one here involved, were finally decided upon the basis of the best letter or essay written by the ultimately successful contestant. It was freely admitted at the hearing in this case that respondents anticipated and, in fact, planned that the current so-called "Hall of Fame Puzzle Contest" will similarly be decided upon the basis of the best letter written and not upon the basis of the correct solutions of the puzzles. It is therefore apparent from the evidence in this case, and I so find, that respondents knowingly and falsely represented to persons solicited to participate in the "Hall of Fame Puzzle Contest" that they could and would win the prizes offered by submitting the most correct solutions to the "All 80 Puzzles" and later to the tie-breaking puzzles, whereas, in truth and in fact, as they well knew, such representations were untrue and this contest can only be won by solving all the puzzles and, in addition, writing what will finally be adjudged the best letter on the subject "The Puzzle I Found Most Interesting and Educational in This Contest." In other words, the con-

test is one in which the winners will be those who are the best letter writers.

The fact that the contest might be decided by a best letter is mentioned in the official rules only as a remote contingency, whereas, in truth, it was an inevitable certainty from the very beginning of the contest, as the respondents well knew.

(R. 40):

> The participant enters the contest upon the basis of representations and rules which lead to the belief that he will have to pay only a total of $3.00 for the privilege of solving "all 80 puzzles." However, as the contest continues through its succeeding stages he is called upon by the promoters for ever-increasing remittances, amounting at this stage of the enterprise to as much as $42.00. If he resists the demands or invitations to pay the additional sums necessary to qualify him for the double and quadruple prizes, he will nevertheless be compelled to remit a total of $9.00 in order to remain in the contest up to and through the final stages, a fact which is not revealed to the participants at the outset.

SUMMARY OF ARGUMENT

Even without express misrepresentations, statements which are so designed, by the suppression of a known fact, as to produce a false impression upon the minds of others and to mislead them are fraudulent. Whether particular advertising has such an effect presents an issue of fact upon

which the administrative determination is to be accepted if it has a rational basis.

The basic misrepresentations, upon which all the formal charges and findings rest, lay in the fact that respondents knew for a certainty that thousands of contestants would solve all the original 80 puzzles, and both groups of tie-breakers, and therefore knew that the contest would run through three groups of puzzles into a letter writing contest in which thousands of qualifiers would be eligible. The contestants, on the other hand, though informed (if they read the rules carefully enough) that there was a chance that the contest would run through two tie-breaking sets of puzzles and a judging of the letters, were led to believe that this was only a possibility, not a substantial certainty, and that the contest also might be completed on the basis of the first or second group of puzzles without the necessity for a third. The concealment by respondents of their *knowledge* that the contest would run through to its letter writing conclusion caused persons to enter the contest who would otherwise not have done so, both because (1) persons who would enter a puzzle contest despite the possibility of tie-breaking essays might not enter a contest which they knew would consist of three qualifying rounds of simple puzzles, and then a final round of competitive letter writing for which thousands of the original competitors would remain eligible, and (2) persons would be less likely to enter a contest

which they knew would cost $9.00 than one which might cost only $3.00. Indeed, the rules did not make it clear to the contestants that more than the original $3.00 would be required in the event of ties.

ARGUMENT

THERE WAS A REASONABLE BASIS IN THE EVIDENCE FOR THE POSTMASTER GENERAL'S CONCLUSION THAT RESPONDENTS' SCHEME WAS DECEPTIVE

Section 3929 of the Revised Statutes provides that the "Postmaster General may, upon evidence satisfactory to him * * * that any person or company is conducting any * * * scheme or device for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, instruct postmasters * * * to return all * * * letters * * * with the word 'Fraudulent' plainly written or stamped upon the outside thereof."[10]

A. LEGAL PRINCIPLES

This case involves two principles of law and their application to the facts heretofore summarized.

1. *Suppression of a material fact is fraud.*—The first, in the language of the Court of Appeals for the District of Columbia itself in an earlier mail

[10] The constitutionality of the Act was specifically upheld by this Court in *Public Clearing House* v. *Coyne*, 194 U. S. 497.

fraud case (*Farley* v. *Simmons*, 99 F. 2d 343, 346, certiorari denied 305 U. S. 651) which was expressly reaffirmed in the instant case (R. 61), is "that even if an advertisement is so worded as not to make an express misrepresentation, nevertheless, if it is artfully designed to mislead those responding to it, the mail fraud statutes are applicable".

This is in conformance with the general principle long recognized in actions for fraud or deceit that "the gist of the action is fraudulently producing a false impression upon the mind of the other party; and if this result is accomplished, it is unimportant whether the means of accomplishing it are words or acts of the defendant, or his concealment or suppression of material facts not equally within the knowledge or reach of the plaintiff." *Stewart* v. *Wyoming Ranche Co.*, 128 U. S. 383, at 388. The "suppression of a material fact, which [the party] was bound in good faith to disclose, was equivalent to a false representation". *Tyler* v. *Savage*, 143 U. S. 79, 98. In *Equitable Life Insurance Co.* v. *Halsey, Stuart & Co.*, 312 U. S. 410, 425–426, this Court approved the "generally accepted doctrine" adopted in the Restatement of Torts, § 529, that " 'a statement in a business transaction which, while stating the truth so far as it goes, the maker knows or believes to be materially misleading because of his failure to state qualifying matter is a fraudulent misrepresentation'. Such a statement of a half

truth is as much a misrepresentation as if the facts stated were untrue."

2. *Scope of review of administrative factual inferences.*—Whether material facts were concealed, whether the advertising gave those to whom it was addressed a false impression, present questions of fact. And this leads to the second legal principle of significance in this case—that on such matters of fact the finding of the Postmaster General will not be disturbed by the courts "where it is fairly arrived at and has substantial evidence to support it, so that it cannot justly be said to be palpably wrong and therefore arbitrary. *Bates and Guild Co.* v. *Payne,* 194 U. S. 106, 108, 109; *Smith* v. *Hitchcock,* 226 U. S. 53, 58; *Houston* v. *St. Louis Independent Packing Co.,* 249 U. S. 479, 484; *Milwaukee Social Democratic Publishing Co.* v. *Burlesen,* 255 U. S. 407, 413, and cases cited." *Leach* v. *Carlile,* 258 U. S. 138, 140. This principle has frequently been recognized by the Court of Appeals for the District of Columbia as applicable to fraud orders issued by the Postmaster General.[11]

The court below did not doubt that this doctrine—the general rule as to the scope of judicial review of administrative action—was controlling. But in our opinion, it disregarded the many cases

[11] *Farley* v. *Heininger,* 105 F. 2d 79, 81–82 (App. D. C.), certiorari denied, 308 U. S. 587; *Farley* v. *Simmons,* 99 F. 2d 343, 347–348 (App. D. C.), certiorari denied, 305 U. S. 651, *National Conference on Legalizing Lotteries* v. *Farley,* 96 F. 2d 861 (App. D. C.), certiorari denied, 305 U. S. 624.

holding that under the rule "the inferences from the evidence are to be drawn by the [administrative agency] and not by the courts". *Medo Corp.* v. *National Labor Relations Board*, 321 U. S. 678, 681–682n; *Corn Products Co.* v. *Federal Trade Commission*, 324 U. S. 726, 739; *Federal Trade Commission* v. *A. E. Staley Manufacturing Co.*, 324 U. S. 746, 760; *National Labor Relations Board* v. *Southern Bell Telephone Co.*, 319 U. S. 50, 60; *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105, 107; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 271; *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297, 307; *Del Vecchio* v. *Bowers*, 296 U. S. 280, 287; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73; *Federal Trade Commission* v. *Pacific States Paper Trade Association*, 273 U. S. 52, 63.

In the instant case there is no dispute as to what representations respondents made, or as to what the facts are. Whether the representations left readers with a false impression and whether they were intended by respondent to do so are matters of factual inference. On such questions the administrative determination is to be accepted if there is a "rational basis" for the administrative conclusion. *Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282, 287; *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 146.

Since the above principles are both indisputable and undisputed, the question in this case is whether there was a reasonable basis for the Postmaster General's inference of fact that respondents' scheme was designed to create a false impression.

B. THE BASIC ISSUE: CONCEALMENT OF THE CERTAINTY OF TIES

The court below, in our view, mistakenly held that there was no misrepresentation because, despite Mr. Justice Edgerton's clarifying dissent,[12] it misunderstood the nature of the deception respondents were practicing.

The basic misrepresentations, upon which all the formal charges and findings rest, lay in the fact that respondents knew for a certainty that

[12] "The puzzles were simple. Appellees knew from experience with similar contests that thousands of contestants would solve all the puzzles correctly; that it was impossible to win a prize merely by solving puzzles; and that prize winners would be chosen from among thousands of persons on the basis of a letter-writing contest. So much is plain and undisputed.

"It follows that if appellees intended to convey to all or any of their readers either (1) the idea that the contest was merely a puzzle contest or (2) the idea that there was a substantial chance that prizes would be won merely by solving puzzles, appellees made a false pretense. The fraud order must be sustained if the Postmaster General could reasonably find either of those intents. Either is plainly material, since a person who is willing to risk his money in a puzzle contest may be unwilling to risk it in a letter-writing contest and a person who is willing to face a possibility that puzzles may not be decisive may be unwilling to face a certainty that they will not be decisive." (R. 63–64.)

thousands of contestants would solve all the original 80 puzzles, and both groups of tie-breakers, and therefore knew that the contest would run through three groups of puzzles into a letter writing contest in which thousands of qualifiers would be eligible. The contestants, on the other hand, though informed (if they read the rules carefully enough) that there was a chance that the contest would run through two tie-breaking sets of puzzles and a judging of the letters, were led to believe that this was only a possibility, not a substantial certainty, and that the contest also might be completed on the basis of the first or second group of puzzles without the necessity for a third. The concealment by respondents of their *knowledge* that the contest would run through to its letter writing conclusion was of significance in at least two important respects.

1. Many persons who would enter a puzzle contest even against thousands of competitiors would be much less disposed to enter a contest which they knew from the beginning would consist both of a qualifying series of puzzles and a final round of essays or letters for which thousands of the original contestants would remain eligible. Many persons who would have confidence in their ability to solve such puzzles as were illustrated in respondents' advertising would not feel that they possessed the competence in literary composition essential for successful participation in a large scale essay contest. Such persons would enter

a puzzle contest despite what they would regard as a possibility that letters might be required to break a tie. They might not enter a contest in which they knew for a certainty that a tremendous number of persons would solve all the puzzles and be eligible to compete with them in letter writing. This was a fact which respondent knew but failed to disclose.[13]

2. The second aspect of the deception is that prospective contestants would be much less likely to enter a contest which they knew would ultimately cost $9.00 than one costing $3.00, even taking into account that for each $3.00 a contestant would receive a book.[14]

Even if it be assumed, contrary to the Postmaster General's finding (discussed *infra*, pp.

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[13] The Postmaster General found *inter alia* that respondents were misrepresenting the contest as one in which prizes would be awarded "for the correct solution of puzzles" (R. 35, 43). This finding was proper, since respondents knew that prizes would in fact be awarded only to persons who solved all the puzzles and who "in addition" (R. 38) wrote superior letters. The concealment of a material portion of the facts is as deceptive as an affirmative misstatement. See pp. 24–25, *supra*. There is no basis for respondents' suggestion that this finding means that the Postmaster General thought that respondents' advertising would have been accurate if it had characterized the contest as only a letter writing contest. See the finding, R. 38. Nevertheless, inasmuch as thousands of contestants were certain to solve all the puzzles correctly, the real competition was in the letter writing, and respondents knew that the prizes would in fact be awarded on the basis of a judging of the letters.

[14] A reasonable man could conclude from respondents' advertising that the lure for the contest was to be the prize money rather than the unidentified literary classics.

40–44), that the advertisements and the rules made it clear to the contestants that an additional $3.00 must be paid with each tie-breaking group of puzzles, contestants would still be led to believe that the contest might end with the first 80 puzzles and that there was only a possibility, not a certainty, that the contest would run through two tie-breaking groups each requiring the payment of an additional fee. Persons who would enter a contest which they thought might cost only $3.00 might not enter a contest which they knew would cost $9.00, particularly when 90 of the 500 prizes offered amount to $10.00 and 400 to only $5.00. Even apart from the letter writing requirement and the multiple prizes and fees, respondents knew from their experience that no contestant could win any prize without the payment of $9.00 in fees.

For the above reasons, respondents' representations would be fraudulent if respondents knew that the contestant would run through three groups of 80 puzzles and cost $9.00, and be resolved by the judging of thousands of letters, but deliberately gave contestants the impression that these were only possible contingencies. By deliberately failing to state the whole truth in order to give an erroneous impression, respondents' activity was "as much a misrepresentation as if the facts stated were untrue". *Equitable Life Insurance Co.* v. *Halsey, Stuart & Co.*, 312 U. S. at 425–426, *supra*, p. 25.

It is necessary only to refer briefly to the evidence summarized in the Statement to show that there was adequate support for the Postmaster General's finding as to these factors.

C. EVIDENCE AS TO RESPONDENTS' KNOWLEDGE THAT THE CONTEST WOULD CULMINATE IN A JUDGING OF LETTERS

This was the fourth rebus puzzle contest conducted by respondent since 1941. In each of the other three the prizes had been awarded on the basis of letters submitted by those who were tied in working the puzzles (R. 86–87). In the one of these contests for which the figures appear in the record, the "All-American Contest", 55,000 persons correctly solved three sets of rebus puzzles and were eligible for the letter writing finale. See p. 6, *supra*. Respondents' officers admitted that the "Hall of Fame Contest" was patterned on the "All-American Contest" (R. 71–75); and in fact the "Hall of Fame Contest" was conducted in substantially the same manner as the "All-American Contest". The rules, the letters of solicitation, the scheme for double prizes in return for additional fees, were in substance indistinguishable. The fact that 27,000 out of 35,000 entrants correctly solved all the first group of tie-breaking puzzles, almost the same percentage as among the "All-American" first tie-breakers,[18]

[18] 77,000 out of 95,000, or 81% solved the first tie-breakers in the "All-American Contest" (R. 74). The percentage in the "Hall of Fame Contest" was 77.

indicates that the puzzles were of comparable difficulty. The use of the guide lines in the "Hall of Fame Contest" also strongly suggests that respondents were not seeking to make the puzzles too difficult. See pp. 9–10.

Furthermore, it is clear that respondents had a strong financial motive not only to have the contest extend at least through all three tie-breaking puzzles but to have as many contestants as possible participate right through to the end.[16] As the Postmaster General found (R. 42) "the greater the number of 'ties' the more profitable this so-called 'puzzle contest' is to its promoters."[17] For respondents received at least $3.00 (minus approximately 65¢ to cover the cost of a book) from each contestant for each tie-breaking series. And respondents sought substantially to increase the fees paid through a carefully planned advertising campaign to induce contestants in the tie-breaking contests to pay in additional sums up to a total of $45.00[18] in order to obtain multiple prizes. In the

[16] Even apart from the letter writing, contestants would be deceived if respondents knew from the beginning that the contest would run through all tie-breaking puzzles at additional cost to contestants while the latter were given the impression that there was only a possibility that the contest would go beyond the original 80 puzzles and $3.00 fee.

[17] The smaller number of entries apparently prevented this contest from being as profitable as the "All-American Contest" (Cf. R. 74, 3).

[18] $3.00 for each of the three groups of puzzles, $12.00 additional for the second, $24 additional for the third (R. 37–40).

"All-American Contest" 44,000 out of the final 77,000 were persuaded to pay extra fees (R. 79), and respondents had good reason to believe that the same tactics would be as fruitful in the contest here in issue.

The motive of respondents to devise a contest in which a great number of persons would participate through all the tie-breaking series is thus clear. And this Court, speaking through Chief Justice Hughes, has wisely observed that "Motive is a persuasive interpreter of equivocal conduct, and the petitioners are not entitled to complain because their activities were viewed in the light of manifest interest and purpose." *Texas & N. O. R. Co.* v. *Ry. Clerks,* 281 U. S. 548, at 559.

D. EVIDENCE AS TO RESPONDENTS CONCEALING FROM CONTESTANTS THE KNOWLEDGE THAT THE CONTEST WOULD CULMINATE IN THE JUDGING OF LETTERS

Respondents could, of course, have informed prospective contestants of that which respondents knew to be the fact, that the contest would cost $9.00 and consist of three qualifying rounds of simple rebus puzzles plus a final round of letter writing for the many persons who would inevitably solve all the puzzles. Whether many persons—or as many—would have entered such a contest may be doubted. Respondents themselves apparently had no confidence in the drawing power of such an honest disclosure. For their advertising was carefully calculated not to misstate facts

but nevertheless to give readers an erroneous impression.

Except in the rules themselves, the original advertising and literature did not refer to ties, additional puzzles, additional expenditures, or letter writing. The emphasis—in large letters—was on PUZZLES. See Exhibits opp. R, 36, 87. Some of the advertisements did not contain the rules (Ex. 1–B, opp. R. 87), and in others the location of the rules, and particularly of the provision relating to tie-breaking and letter writing, was quite inconspicuous (Ex. 1, opp. R. 36). Mr. Justice Edgerton, dissenting below, was of the view that in setting that provision "in fine print, near the bottom of the page, in a paragraph introduced by matter both unrelated and unimportant, what can have been their purpose, except to prevent as many prospective contestants as possible from finding out that the contest might involve letter writing?" (R. 66).[19]

But if we assume that prospective contestants read the rules, they were still given the impression—or the Postmaster General could reasonably so find—that the contest might be completed with the first 80 puzzles or within the first two tie-breaking series of puzzles. A person examining the rules would learn that the contest *might* end

[19] On this point the dissenting opinion states more fully (R. 65–66):

"The writing of letters is nowhere mentioned in type that is large or heavy or prominently placed. It is mentioned

in a letter-writing competition for which many persons *might* be eligible. But, in Mr. Justice Edgerton's language, a prospective contestant "would not learn that thousands of persons were certain to be eligible, or even that any letter-writing contest at all was certain to be required.

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only in the Rules. The Rules are in fine print, twelve lines to an inch, in the lower left-hand corner of the page. They contain almost a thousand words divided into ten numbered paragraphs. The quotation on which the court relies, beginning with the words 'In case of ties * * *' and ending with the words '* * * the conclusion of the contest,' is a part of paragraph 9 of the Rules. That paragraph is the longest of the ten and therefore the least likely to be read in its entirety. It does not begin with the language which the court quotes. It begins with these words: 'Neatness will not count. Do not decorate your answers. Just submit your solutions in accordance with the rules.' Nothing could be better calculated to suggest to a prospective contestant (a) that the remainder of the paragraph, like its opening sentences, is unimportant and need not be read, and (b) that the remainder of the paragraph, like its opening sentences, deals only with 'answers' and 'solutions.' Then follows, beginning in the middle of a line of fine print, with nothing to emphasize it or draw the reader's attention to it, the language which the court quotes and on which the court relies. It would have been easy for appellees to print this language in large type, or in heavy type, or to begin a paragraph with it, or to devote an entire paragraph to it, or to do several of those things. From any point of view but one and for any purpose but one, the importance of this language clearly demanded that attention be called to it in some way, since it was the only language in the entire advertisement which tended to qualify the numerous and conspicuous assertion of the headlines, the large type, the pictures, and the entry form that the contest was a puzzle contest. Instead of emphasizing this vital language, appellees did the opposite. They hid it as effectively as they could. * * *"

Nothing of that sort is stated anywhere, not even by the hidden language on which the court relies. On the contrary, that very language intimates, clearly and repeatedly, that ties in the solving of puzzles may or may not occur and that although the prizes may not, on the other hand they may, be won by the solving of puzzles alone: '*In case* of ties, *if* two or more persons tie in submitting the correct solutions'; '*if necessary*, a second tie-breaking group of puzzles'; '*In case* a second tie-breaking group of puzzles is necessary'; '*Only in case* ties exist after such final tie-breaking puzzles have been checked will the letters be considered'; 'the sponsor *anticipates* that a large number of persons *may* enter the contest and that a large number *may* solve, one, two or all three of the Groups of puzzles.' [Italics supplied.]" (R. 66).

In further reply to the suggestion of the majority below that the next to the last sentence of paragraph 9 gave contestants adequate notice, Mr. Justice Edgerton stated "The court says that prospective contestants were 'told in the Rules that the sponsors anticipated that a "large number" of persons would solve all the puzzles.' I cannot find this statement in the Rules. In other words I do not agree with the court that 'may' means 'will.'" (R. 66–67).

The repeated use of such qualifying phrases as "in case of ties" clearly was designed to suggest that ties were not certain to occur.

And these conditional expressions were placed in a setting in which the original puzzles alone were mentioned and stressed over and over again. Read in this background a contestant would not understand that the contest was certain to run through three groups of puzzles costing $3.00 each and to culminate in a large scale competition in writing letters.

After the contest started, respondents continued to foster this mistaken impression by sending contestants a number of letters referring to the contest exclusively as a puzzle contest, *supra*, p. 13. In addition, respondents informed contestants that "*if* you are the only person in the contest to correctly solve all 80 of the puzzles * * * you will automatically be entitled to the first prize" (R. 103, see p. 13, *supra*). This statement was followed by a caveat "that *if* other persons correctly solve 80 puzzles" there would be resort to the tie-breaking procedure; but it nevertheless clearly implies that possibly only one contestant might solve the first 80 puzzles correctly.

The court below found it "impossible to believe that any prospective contestant would think that only one person would be successful in the solutions" (R. 62). Nevertheless, the possibility of this was the impression which respondents sought to convey. As Mr. Justice Edgerton stated in his dissent (R. 67), "Many readers lacked the knowledge, based on experience with similar contests, which appellees had and this court now

has. * * * To say that it [the court's finding] invalidates the fraud order is equivalent to saying that if a scheme would not deceive reasonable men, to whom it is not primarily addressed, it may legally be used to take money from children and other simple people. The advertisement is primarily addressed to such people, since they are the ones likely to be attracted by crude and easy puzzles." In rejecting a similar contention this Court said in *Federal Trade Commission* v. *Standard Education Society*, 302 U. S. 112, 116 "The fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced." See also *Worden* v. *California Fig Syrup Co.*, 187 U. S. 516, 530; *Bailey* v. *Smith*, 23 F. 2d 977, 979 (App. D. C.). "When the parties do not have equal means of knowledge, it is immaterial that the victim, if more suspicious, could have discovered the cheat." *Falter* v. *United States*, 23 F. 2d 420, 424 (C. C. A. 2). "The law is not made for the protection of experts, but for the public—that vast multitude which includes the ignorant, the unthinking and the credulous, who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions." *Florence Mfg. Co.* v. *J. C. Dowd & Co.*, 178 Fed. 73, 75 (C. C. A. 2).

The Postmaster General's conclusion that readers would be deceived as to the true nature of the contest—and that respondents so in-

tended—thus has ample support in the evidence. With Mr. Justice Edgerton we think not only that the inference of fraud was reasonable, but that it was the only possible inference that can reasonably be drawn.

E. THE NECESSITY OF PAYING ADDITIONAL FEES FOR TIE-BREAKER PUZZLES

We have pointed out how contestants were deceived as to the actual cost of the contest in that their ignorance of the fact, known to respondents, that prizes could not be awarded until all three tie-breaking groups of puzzles had been solved, led them to believe that the contest might cost $3.00 instead of $9.00. Such a mistaken impression would occur even if it be assumed that contestants knew that an extra $3.00 was required for each tie-breaking series—since they would not be aware that the two tie-breaking series were inevitable. But this assumption, in respondents' favor, is unwarranted.

Concerning the payments to be required, the booklet containing "All 80 puzzles" distributed by respondents states (p. 3): "Enclose 15 cents In Coin With Each Series of Solutions". The advertisement in *Newsday of* April 3, 1945, stated (Ex. opp. R. 36): "Enclose 15¢ With Each Series," and then added in small type: "To qualify your solutions for a prize, as provided under the Rules, enclose 15 cents in coin with each Series of four puzzle solutions. Coins should be wrapped care-

fully in a small piece of paper. In return for the remittances for the twenty Series, you will receive the book issued by the Literary Classics Book Club as per the Rules." The advertisements would thus lead one to believe that the contest would cost 15 cents for 20 series, or $3.00. Nor does a reading of the "Official Rules Of The Contest" (*ibid.*) change this impression.

Rule 4 opens with the statement that "The 80 puzzles are divided into 20 Series of 4 puzzles each." After setting forth a number of other matters, the Rule concludes with the statement that "All Series must be qualified in accordance with Rule No. 8." Rule 8, quoted in full, *supra*, (p. 11), states:

> 8. To qualify for a prize, the contestant is required to accompany each Series of of four solutions with 15 cents in coin. Each contestant who submits a complete Group of solutions for this contest qualified in accordance with the Rules will receive the book selected for the month of July by the Literary Classics Book Club. Any contestant who becomes eligible to submit, and who does submit, a Group of qualified tie-breaking solutions, will receive the following months Book Club selection. * * *

The only other reference in the rules to the charges for the contest is buried in the middle of Rule 9, by far the longest and most involved of the 10 rules, where it is stated that "All tie-

breaking Series must be qualified in accordance with the provisions of Rule No. 8." This statement, even if a prospective contestant should reasonably be expected to have found it in the rules and to have studied it in detail, still would not cause him to believe that he would have to pay sums in excess of $3.00.

For if he should scrutinize Rule 8 with great care he would find that the first sentence refers to a contestant qualifying, and the second sentence to each contestant submitting a complete group of solutions qualified in accordance with the rules receiving the "book selected for the month of July". This would imply that a contestant would become qualified if he sent in the first group of 80 puzzles with the requisite sum of $3.00, inasmuch as the rules require these puzzles to be submitted not later than June 16, 1945. A contestant might reasonably believe that if he qualified "for a prize in accordance with the Rules" in completing the first group of puzzles that would enable him to compete in any tie-breakers necessary before prizes could be awarded.

Respondents argue that, if rules 8 and 9 are read together, they require the payment of 15¢ with each series of four solutions in the tie-breaking puzzles as well as in the original 80. A lawyer reading the rules as meticulously as he would a will or a deed would see that they could be so construed—although not that they must be.

But respondents were not appealing to the type of mind trained in the refinements of the interpretation of documents. It would have been simple enough for respondent to have made a clear and frank statement of the cost of the contest, a matter of obvious importance to contestants. But, as the memorandum for the Postmaster General stated (R. 40–41):

> the rules which respondents claim contain this information are obscurely and ambiguously phrased. They are plainly calculated to conceal the true facts, which might discourage any potential contestant from entering the contest. It is apparent that respondents' contest promotional experiences have demonstrated the financial advantages of using such obscurely worded rules. To plainly state the proposition to persons solicited to enter the contest would limit entrants to those who were convinced of their superior essay-writing abilities, whereas, the lure in the present case is to persons who, finding the "ALL 80 PUZZLES" so obviously simple of solution, believe themselves entirely capable of winning the $10,000 prize merely by submitting such correct solutions and paying the small sum of $3.00 in weekly remittances of 15 cents each. Even those who most scrupulously study the so-called "Official Rules" and consider their content in connection with the other representations printed in juxtaposition thereto could not divine the facts which are well known to the promoters but

not to the contestant; namely that participation costs more than $3.00; that so-called "tie-breakers" are inevitable, and that the contest can be won only by the person writing the best letter upon the subject "The Puzzle I Found Most Interesting and Educational in This Contest," with respect to which it is stated that "*only in case ties exist* after such final tie-breaking puzzles have been checked will the letters be considered * * *." [Italics supplied.]

Even if it be thought that the above conclusion is debatable, it certainly was not unreasonable, or irrational, for the Postmaster General to reach such a result.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be reversed and the case remanded to the District Court with directions to dismiss the complaint.

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OCTOBER 1947.

APPENDIX

R. S. § 3929 (39 U. S. C. 259), as amended by the Act of September 19, 1890, c. 908, § 2, 26 Stat. 465, 466, provides as follows:

> SEC. 3929. The Postmaster-General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme or device for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, instruct postmasters at any postoffice at which registered letters arrive directed to any such person or company, or to the agent or representative of any such person or company, whether such agent or representative is acting as an individual or as a firm, bank, corporation, or association of any kind, to return all such registered letters to the postmaster at the office at which they were originally mailed, with the word "Fraudulent" plainly written or stamped upon the outside thereof; and all such letters so returned to such postmasters shall be by them returned to the writers thereof, under such regulations as the Postmaster-General may prescribe. But nothing contained in this section shall be so construed as to authorize any postmaster or other person to open any letter not addressed to him-

self. The public advertisement by such person or company so conducting such lottery, gift enterprise, scheme, or device, that remittances for the same may be made by registered letters to any other person, firm, bank, corporation, or association named therein shall be held to be prima facie evidence of the existence of said agency by all the parties named therein; but the Postmaster-General shall not be precluded from ascertaining the existence of such agency in any other legal way satisfactory to himself.

R. S. § 3929 was further amended by the Act of March 2, 1895, c. 191, § 4, 28 Stat. 963, 964, to cover not only registered letters but all letters or other matter sent by mail:

SEC. 4. That the powers conferred upon the Postmaster-General by the statute of eighteen hundred and ninety, chapter nine hundred and eight, section two, are hereby extended and made applicable to all letters or other matter sent by mail.

R. S. § 4041 (39 U. S. C. 732), as amended by the Act of September 19, 1890, c. 908, § 3, 26 Stat. 465, 466, provides as follows:

SEC. 4041. The Postmaster-General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or

promises, forbid the payment by any postmaster to said person or company of any postal money-orders drawn to his or its order, or in his or its favor, or to the agent of any such person or company, whether such agent is acting as an individual or as a firm, bank, corporation, or association of any kind, and may provide by regulation for the return to the remitters of the sums named in such money-orders. But this shall not authorize any person to open any letter not addressed to himself. The public advertisement by such person or company so conducting any such lottery, gift enterprise, scheme, or device, that remittances for the same may be made by means of postal money-orders to any other person, firm, bank, corporation, or association named therein shall be held to be prima facie evidence of the existence of said agency by all the parties named therein; but the Postmaster-General shall not be precluded from ascertaining the existence of such agency in any other legal way.

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No. 50

In the Supreme Court of the United States

OCTOBER TERM, 1947

ROBERT E. HANNEGAN, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, PETITIONER

v.

READ MAGAZINE, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

SUPPLEMENTAL MEMORANDUM FOR THE PETITIONER

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SUPPLEMENTAL MEMORANDUM FOR THE PETITIONER

The purpose of this memorandum is to apprise the Court that on December 8, 1947, the Postmaster General issued an order (No. 36060) revoking Order No. 29273, the order involved in this case, in so far as it applies to mail and money orders addressed to "Facts Magazine; Henry Walsh Lee, Editor in Chief, Facts Magazine, and their officers and agents as such." This leaves the order in effect in so far as it extends to mail and money orders addressed to "Puzzle Contest, Facts Magazine; Contest Editor, Facts Magazine; Judith S. Johnson, Contest Editor; Miss J. S. Johnson, Contest Editor; Contest Editor."

Inasmuch as the advertisements and rules of the contest instructed prospective contestants to address mail to "Puzzle Contest, Facts Magazine," and letters addressed to contestants were signed "Judith S. Johnson, Contest Editor," the use of the mails in connection with the fraudulent scheme can be prevented by an order prohibiting the delivery of mail so addressed. Prior to this Court's order of November 17 ordering reargument no question as to the scope of the fraud order here involved had been presented to the Postmaster General. Upon consideration of that question as a result of this Court's order, the Acting Postmaster General has concluded that the original order, which shut off all mail addressed to the magazine, its editor-in-chief, and its other officers and agents, was unduly broad.

The Order of December 8, 1947, reads as follows:

> It having been made to appear to the Postmaster General that Order No. 29273, dated October 1, 1945, forbids the delivery of mail to and the cashing of money orders drawn in favor of Facts Magazine; Henry Walsh Lee, Editor in Chief, Facts Magazine, and their officers and agents as such at New York, New York, whereas in fact such names need not be included in said order to prevent the fraud, it is hereby
>
> Ordered that Order No. 29273 be revoked insofar as it applies to Facts Magazine; Henry Walsh Lee, Editor in Chief, Facts

Magazine, and their officers and agents as such.

J. M. DONALDSON,
Acting Postmaster General.

The original Order, dated October 1, 1945, never became fully effective. It was stayed initially by the District Court on October 2, 1945 (R. 45), which stay was continued by a temporary injunction October 19, 1945 (R. 44–45) and by a permanent injunction November 27, 1945 (R. 57–58). The district court in granting a temporary injunction required that all money sent in to the respondents as qualifying fees in the Hall of Fame Puzzle Contest be impounded in the Registry of the Court *pendente lite* (R. 45). At the time the permanent injunction was entered on November 27, 1945, this impounding order was continued in effect until final disposition of any appeal (R. 56–57). Such money, which of course, was received only in mail relating to the puzzle contest, and which amounts to approximately $51,000, is still in the Registry of the District Court. If the judgment below is reversed this money presumably will be returned to the senders. The original order of the Postmaster General has thus far had no other effect.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

U. S. GOVERNMENT PRINTING OFFICE 1945

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 50

JESSE M. DONALDSON, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, PETITIONER

v.

READ MAGAZINE, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONER ON REARGUMENT

This brief is filed pursuant to this Court's order of November 17, 1947, restoring the case to the docket for reargument and requesting discussion of the following questions:

1. Does the fraud order prohibit delivery of mail and postal money orders to Facts Magazine and all its employees, including the editor-in-chief? If so—

(a) Is the order within the Postmaster General's authority under 39 U. S. C. sections 259, 732?

(b) If so, do these code provisions, in violation of the First Amendment or any other constitutional provisions, abridge the freedom of speech or press of either the senders or the sendees of the mail or the money orders?

2. Does the fraud order prohibit indefinitely the delivery of mail or money orders which relate to subject matters or contests other than the contest on which the order is based? If so—

(a) Is the order within the Postmaster General's statutory authority?

(b) If so, are those code provisions in conflict with the Constitution of the United States?

3. Assuming that the order is in conflict with the code provisions or the Constitution, can it be modified in such way as to free it from statutory or constitutional objections? If so, by whom can the order be modified and by what procedure?

STATUTES INVOLVED

The statutes involved, 39 U. S. C. §§ 259, 732 (R. S. 3929, 4041, as amended by the Act of September 19, 1890, c. 908, §§ 2, 3, 26 Stat. 465, 466, and by the Act of March 2, 1895, c. 191, § 4, 28 Stat. 963, 964), are set forth in Appendix A, *infra*, pp. 75–77.

PRESENT POSTURE OF THIS CASE

As this Court has been advised in the supplemental memorandum filed on behalf of petitioner, the Postmaster General on December 8, 1947,

revoked the order here involved in so far as it applied to mail and money orders addressed to "Facts Magazine; Henry Walsh Lee, Editor in Chief, Facts Magazine, and their offices and agents as such." This leaves the order outstanding against mail and money orders addressed to "Puzzle Contest, Facts Magazine; Contest Editor, Facts Magazine; Judith S. Johnson, Contest Editor; Miss J. S. Johnson, Contest Editor; Contest Editor."

This partial revocation of the fraud order limits the order as closely as possible to mail relating to the puzzle contest and hence restricts the pertinence of the problems raised by this Court's order to two phases of the factual situation presented:

(1) The validity of the order in so far as it relates to the funds deposited in the Registry of the District Court. That court, simultaneously with the granting of the preliminary injunction, required respondents to deposit in the Registry of the District Court all money and the proceeds of all checks and money orders subsequently received by them as qualifying fees for participation in the Hall of Fame Contest, together with a list of the names and addresses of the persons who had remitted the money (R. 44–45). At the time of the granting of the permanent injunction, this impounding order was continued pending the disposition of the appeal of this cause (R. 56–57).

We are advised that at present there is impounded in the Registry of the District Court $51,240.33. If the contest is held to be fraudulent and the fraud order lawful, the sums impounded presumably would be returned to the senders.[1]

(2) The validity of the order in so far as it applies to the mail addressed to the Puzzle Contest and the Puzzle Contest Editor in the future. The advertising and rules of the contest instructed participants to address mail to "Puzzle Contest, Facts Magazine" (Exs. opp. R. 36), and the correspondence was in fact addressed to and signed by the Contest Editor (R. 97, 98, 99, 101, 102, 111, 114, 116, 118, 120, 121, 124, 134, 139).[2]

We submit that it is unnecessary for the Court to consider the legality of the revoked provisions of the original order. In the first place, the original order has never been operative since it was stayed by the District Court the day following its issuance, which stay is still in effect (R. 44–45, 57–58). Moreover, this suit is one for injunctive relief (R. 11–12), and any injunction granted would operate only *in futuro*. Thus, the fact that the original order had a broader application, extending to mail which might have had nothing

[1] Although the District Court's order does not so state, the obvious reason for the impounding order was to protect the senders and simultaneously to effectuate the fraud order *pro tanto* if respondents' scheme was ultimately held to be fraudulent.

[2] One letter was signed by "Facts Magazine by Henry Walsh Lee, Editor in Chief" (R. 112).

to do with the contest, is no longer of any consequence. It cannot be so applied in the future, and respondents need no injunctive relief as to that. It was not so applied in the past, inasmuch as the impounded fund consists entirely of money sent by participants in the contest and taken from mail unquestionably intended for, and presumably addressed to, the contest. The impounding order thus can stand upon the basis of the unrevoked provisions of the original fraud order. And, in any event, a disposition of this suit for an injunction cannot protect respondents against what has already happened in the past. *Standard Oil Co.* v. *United States,* 283 U. S. 163, 181–182; *Love* v. *Griffith,* 266 U. S. 32, 34; *United States* v. *Hamburg-American Co.,* 239 U. S. 466, 475–478; *Mills* v. *Green,* 159 U. S. 651, 653, 657–658; cf. *Ex parte James,* 287 U. S. 572.

Respondents have stated that they believe the Postmaster General's order of December 8 partially revoking the original fraud order to be a nullity. There can, however, be no question as to the Postmaster General's power to revoke, in whole or in part, his own orders directing postmasters not to deliver mail or to pay money orders. Cf. *Wright* v. *Securities and Exchange Commission,* 112 F. 2d 89, 96 (C. C. A. 2); *Sprague* v. *Woll,* 122 F. 2d 128 (C. C. A. 7), certiorari denied, 314 U. S. 669 (Interstate Commerce Commission); *American Chain & Cable Co.* v. *Federal Trade Commission,* 142 F. 2d 909 (C. C. A. 4); see, also, *Milk Wagon Drivers Union* v.

Meadowmoor Co., 312 U. S. 287, 298–299; *Skinner & Eddy Corp.* v. *United States*, 249 U. S. 557, 570.

Nor does the fact that a suit to enjoin the enforcement of the original order is pending or that an injunction against enforcement is outstanding deprive the Postmaster General of his power to revoke. *Lewis Publishing Co.* v. *Wyman*, 228 U. S. 610; *Gibbes* v. *Zimmerman*, 290 U. S. 326, 333; *Commercial Cable Co.* v. *Burleson*, 250 U. S. 360, 362; *Brownlow* v. *Schwartz*, 261 U. S. 216, 218; *Norwegian Nitrogen Products Co.* v. *Tariff Commission*, 274 U. S. 106, 112. The partial revocation is not in violation of but entirely consistent with the injunction; it does not harm but rather benefits respondents by giving them *pro tanto* the relief they requested. Cf. *Ford Motor Co.* v. *Labor Board*, 305 U. S. 364, 375. Moreover, the present proceeding, being a suit to enjoin enforcement, is not an appeal from the order involved but a collateral attack upon it. Cf. *American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94. It is not like a case involving the power of a lower court to alter its judgment when the case is pending on appeal to a higher tribunal, or of an administrative agency to change an order subject to judicial review under a statute transferring jurisdiction of the proceeding to the reviewing court upon the filing of an administrative transcript of record. Cf.

Ford Motor Co. v. *National Labor Relations Board*, 305 U. S. 364.[3] In *Lewis Publishing Co.* v. *Wyman*, 228 U. S. 610, a suit to enjoin denial of second class mailing privileges, the Postmaster General granted the application while the suit was pending. This Court affirmed the judgment of the Circuit Court of Appeals holding the case moot. This decision would seem to be applicable to the revoked portions of the original order in this case.

ANSWERS TO THE QUESTIONS

If, as we submit, the case is now to be considered as presenting only the factual situations referred to above, it is possible to answer most of the Questions asked by this Court without the necessity for elaborate discussion.

Question 1. The first question asked by the Court is whether the fraud order prohibits delivery of mail and money orders "to Facts Magazine and all its employees, including its editor-in-chief." In view of the partial revocation of the order, the answer to that Question is "No." It is therefore unnecessary to answer Questions 1 (a) and 1 (b), which are predicated upon an affirmative answer to Question No. 1.[4]

[3] In the *Ford* case the Court concluded (p. 370) that because of this statutory provision the Labor Board could not "withdraw its petition at its pleasure" but only with leave from the Circuit Court of Appeals, which had been granted.

[4] If the Court should find it necessary to determine the validity of the original order in so far as it applies to those persons as to whom the order has been revoked, the petitioner

Question 3. The Court's third question was whether the order could be modified so as to free it from statutory or constitutional objection, and by what procedure, if the order was assumed to be in conflict with the statutes or the Constitution.

Our answer to this is that the order can be so modified by several procedures, and that in fact it has already been so modified. In the first place, the order can be modified by the Postmaster General himself, either on application by an aggrieved party or on his own motion so long as the modification makes the order less rather than more stringent. The Postmaster General has frequently modified orders after their issuance at the request of the parties concerned, upon being satisfied that some of the names included were not essential to the elimination of the fraudulent use of the mails or that the party would cease engaging in the fraudulent undertaking. This procedure was for the first time embodied in a formal regulation on November 20, 1947 (cf. Section 51.28, 12 F. R. 7944),[3] but the regulation

would, of course, not object to a determination that that order was unduly broad, inasmuch as that is the view of the Postmaster General himself upon his consideration of the scope of the original order. This would mean that an order which went beyond what was necessary to prevent the effectuation of the fraud by prohibiting the receipt of segregable mail not related to the fraud went beyond what the statutes intended.

[3] "§ 51.28. *Revocation and modification of orders.* Any person or concern against whom a fraud, lottery, or fictitious name order has been issued may file application for the revocation or modification of such order by the elimination there-

was only a publication of the preexisting procedure. See letter from Postmaster General, Appendix B, *infra*, pp. 78–81.

Secondly, we believe that if a court, in a proceeding to enjoin enforcement of the order, deems a particular portion of the order unlawful, it can enjoin enforcement of the order to that extent, and thus, in effect, modify the order.

We assume that the most serious objection to the original order was that it applied to mail addressed to Facts Magazine, its editor-in-chief, and all its employees, which would normally not be mail relating to the fraudulent puzzle contest. The order has already been modified so as to obviate this objection. We do not believe that

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from of any name or names against which the provisions of the order apply. The application should be addressed to the Solicitor of the Post Office Department, Washington 25, D. C. The applicant must make a sworn statement to the effect that the unlawful enterprise against which the order is directed is no longer being conducted under the name or names sought to be relieved of the provisions of the order and that the unlawful scheme will not be resumed in the future under such names or any other names. If, after investigation and consideration of such application, it shall appear that the application has been made in good faith and that the granting thereof will not result in further operation of the unlawful enterprise involved, the Solicitor may recommend to the Postmaster General revocation of the fraud, lottery, or fictitious name order in question or so much thereof as may be proper under the facts of the particular case and the exigencies of properly enforcing the postal laws involved therein. Applications will be promptly considered and will be handled as expeditiously as practicable and with due recognition of the pertinent circumstances and the nature of the business involved."

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any further modification is required, but if the Court is of a different view, the procedures just referred to are available.

Question 2. The first part of the Court's second question is: "Does the fraud order prohibit indefinitely the delivery of mail or money orders which relate to subject matters or contests other than the contest on which the order is based?" This question must be considered in three aspects—whether the prohibition applies (a) to other subject matters, (b) to other contests, and (c) indefinitely.

(a) We believe that in its present form the order does not apply to mail and money orders relating to other subject matters than puzzle contests, for the modified order prohibits the delivery only of mail which is addressed to the Puzzle Contest or the Puzzle Contest Editor. Mail concerned with other aspects of the magazine's activities would not be so addressed, nor would it be likely that personal mail would be addressed to Miss Johnson in her capacity as "Contest Editor." The possibility of this is not sufficiently great to affect the validity of the order.

(b) The order would have the effect of prohibiting the delivery of mail addressed to the Puzzle Contest Editor if subsequent contests were conducted and if contestants were instructed to address mail to "Puzzle Contest" or "Puzzle Contest Editor," or Miss Johnson in the latter capacity. We do not know, of course, at this time,

whether respondents intend to conduct other puzzle contests, or, if they do, whether they will give the same mailing address for them.

(c) The order is indefinite in duration. It would obviously be impracticable to place any definite time limit upon the fraud order if it is to accomplish its purpose. Furthermore, the record as to respondents' prior contests indicates respondents' propensity to engage in this type of fraudulent conduct. See petitioner's brief on original argument, pp. 5, 8, 17–18. Under such circumstances courts of equity traditionally issue injunctions indefinite in duration and cast the burden upon the party who has engaged in the course of unlawful conduct to apply for modification when circumstances so justify. Cf. *N. L. R. B.* v. *Express Publishing Co.*, 312 U. S. 426, 436–438; *May Stores Co.* v. *Labor Board*, 326 U. S. 376, 386–393.

As to items (b) and (c), moreover, it is important to note that although the Postmaster General's order extends indefinitely to mail addressed to respondents' Puzzle Contest and Puzzle Contest Editor, it is subject to modification upon application and a showing by respondents that they are no longer engaged in contests or other schemes which are fraudulent. Under the recent regulation formalizing preexisting procedure (pp. 8–9, *supra*), the person against whom a fraud order has been entered may apply for revocation or

modification of the order by filing a sworn statement that the unlawful enterprise is no longer being conducted and will not be resumed in the future. If, upon investigation and consideration, the Postmaster General is satisfied that the application has been made in good faith, the order may be revoked in whole or in part.* This means that if respondents can make a showing that they do not intend to engage in the future in fraudulent puzzle contests, the order presently existing could be completely revoked. We think it clear, however, that it would be *perfectly* proper for the Postmaster General to maintain the present order in effect against respondents' Puzzle Contest Department if respondents manifest an intention to continue to conduct fraudulent puzzle contests.

There remain for consideration Questions 2 (a) and (b)—whether the order is within the Postmaster General's statutory authority and, if so, whether the statutory provisions are in conflict with the Constitution. We can conceive of no basis for arguing that the order in its present form does not come within the Postmaster General's authority under the statutes, if we assume that respondents' scheme was a fraudulent one,—

*The statement of this Court in *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287, 298, with respect to the duration of a "permanent" injunction granted by a court of equity is thus applicable to the orders of the Postmaster General; the Court there stated: "Familiar equity procedure assures opportunity for modifying or vacating an injunction when its continuance is no longer warranted."

and we believe that we are entitled so to assume in answering the questions asked by the Court. That leaves for consideration Question 2 (b) as to the constitutionality of the statutory provisions, as so construed. The remainder of this brief will be devoted to a discussion of that question.

The constitutional question itself may have two aspects: (1) Whether the statutes are invalid in so far as they authorize the action taken by the Postmaster General in this case, and (2) whether the statutes are invalid *in toto*, so that no valid order can, under any circumstances, be entered under them. It is not clear that the Court intends from its Questions that the parties discuss the constitutionality of the statutes on their face, apart from their application in this case. The terms of the Questions suggest that the Court was concerned with the validity of the statutory provisions as here sought to be applied, and that it did not intend to reopen for fresh consideration the question whether statutory provisions which are of such long standing and which had been held valid over forty years ago are entirely void. Inasmuch as the Questions are not clear as to this, however, it seems desirable that we deal with that issue.

The difference between the two issues, is, in our opinion, quite narrow. This will appear from a consideration of the meaning of the statutory provisions.

THE MEANING OF THE STATUTORY PROVISIONS

The statutory provisions involved in terms empower the Postmaster General to require the return of all mail and the non-payment of all money orders addressed to persons found to have been engaged in conducting a scheme for obtaining money through the mails by fraud. But since "the single policy of these sections is to protect the public from fraudulent practices committed through the use of the mails * * * not * * * to impose personal punishment on violators" (*Commissioner* v. *Heininger*, 320 U. S. 467, 474), it is reasonable to construe the statutory provisions as authorizing the stoppage of mail only to the extent necessary to protect the public against the fraud. This would mean that although in terms the statutes might permit the Postmaster General to halt the delivery of all mail directed to a person conducting a fraudulent scheme, an all-inclusive fraud order would not be warranted if segregation of the mail connected with the fraud from other mail is possible.

In many instances, of course, segregation is not possible, inasmuch as the Postmaster General is precluded by specific statutory provisions from authorizing the opening of mail before its delivery. Indeed, this Court has implied that the Constitution forbids the opening of sealed mail. *Ex parte Jackson*, 96 U. S. 727, 735. That being so, the Postmaster General is undoubtedly author-

ized to issue orders against such intermingled mail which will prevent further use of the mails to defraud, even if this may reach innocent material. This Court squarely so held in *Public Clearing House* v. *Coyne*, 194 U. S. 497, 510. The point is discussed more fully *infra*, pp. 34–39, 63–65.

It is not necessary that this statutory authority extend to the stopping of all mail addressed to a person or concern which, in a segregable aspect, is conducting a fraudulent scheme. The statutes have generally been applied by the Post Office Department to mail as closely confined to the fraudulent enterprise as was practicable. Both with respect to lotteries and fraud orders the Department has been generally concerned only with enterprises which are unlawful either in their entirety or in their primary aspects.[1] Although cases such as this do occasionally arise in which orders are issued against a business which is fraudulent in only one phase of its operation, such cases can normally be disposed of without the necessity of a sweeping fraud order. Thus, in the case referred to in the Monograph of the Attorney General's Committee on Administrative Procedure, in which the Postmaster General had issued an order against a

[1] Attorney General's Committee on Administrative Procedure, Administrative Procedure in Government Agencies, Part 12, Monograph on Post Office Department, Sen. Doc. 186, 76th Cong., 3d sess., pp. 16–17; letter from Postmaster General, Appendix B, *infra*, pp. 78–82.

business which was for the most part legitimate, the order was subsequently revoked upon the submission of a stipulation to discontinue the fraudulent portion of the business. Another illustration is a case (Post Office Department F. & L. Docket No. 13/120) in which a citation was issued against a large New York department store for advertising and selling a worthless obesity cure by mail. The citation was vacated upon receipt of assurance that the unlawful advertising and sale of the cure would be discontinued. See pp. 81–82, *infra*. The Post Office Department has advised us that if there had been disagreement in such a case the fraud order would have been limited to mail directed to the particular department of the store involved in the advertisement. Only if segregation is impossible will the order extend to innocent portions of a business.

This does not mean that the Department has in no instance issued an order which, judged by the above standards, is unduly broad; the instant case itself shows the contrary. But, as in the present case, when an issue is raised as to the breadth of the order the Department has endeavored to limit the order to the extent necessary to stop the fraudulent scheme. In the usual case this can be accomplished by accepting a stipulation from the respondent to cease the fraudulent portion of his business and to return

the fraudulently obtained remittances.[8] Where this is not possible, and where the matter is called to the Department's attention, its practice would be to limit the fraud order to the fraudulent portion of the respondent's activities if that could be done. See letter from Postmaster General, Appendix B, *infra*, pp. 78–82.

We believe that the statute can reasonably be construed as embodying the construction which we are suggesting and which the Postmaster General places upon it.[9] If the statutes are so interpreted the only difference between this case and others which might arise is that here it is possible to segregate the mail related to the fraudulent scheme whereas in other cases it might not be. But as long as the statutes are construed as empowering the Postmaster General to issue orders as closely confined to the fraudulent scheme as the particular case permits, the constitutional problem would seem to be substantially the same.

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[8] See Attorney General's Committee on Administrative Procedure, Monograph, p. 17.

[9] If the Court would otherwise have doubt as to the constitutionality of the statutory provisions, they should, of course, be given that construction which will preserve the statutes' validity. *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 407–408; *The Abby Dodge*, 223 U. S. 166; *St. Louis S. W. Ry.* v. *Arkansas*, 235 U. S. 350; *Crowell* v. *Benson*, 285 U. S. 22; *Wright* v. *Vinton Branch Bank*, 300 U. S. 440; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Screws* v. *United States*, 325 U. S. 91, 105.

ONLY THE CONSTITUTIONALITY OF THE STATUTES AS HERE APPLIED IS BEFORE THE COURT

In any event we think this analysis indicates that each case should be treated on its own facts, that some applications of the statutes are clearly constitutional, and that the statutes should not be held wholly void even if it be assumed that in some cases, which rarely arise, they might be carried too far.

This Court has frequently affirmed its "considered practice not to decide * * * any constitutional question in advance of the necessity for its decision * * *, or to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied, * * * or to decide any constitutional question except with reference to the particular facts to which it is to be applied, * * *" *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 461; *United Public Workers* v. *Mitchell*, 330 U. S. 75, 90 n.; *Alma Motor Co.* v. *Timken-Detroit Axle Co.*, 329 U. S. 129. In rejecting the argument that because some applications of the National Labor Relations Act might be invalid the entire Act must fall, the Court stated that this contention "seeks to bar all regulation by contending that regulation in a situation not presented would be invalid. Courts deal with cases upon the basis of the facts disclosed, never with nonexistent and assumed circumstances." *Associated Press* v. *National*

Labor Relations Board, 301 U. S. 103, 132; see also *Crowell* v. *Benson*, 285 U. S. 22, 62; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.* 301 U. S. 1, 30.

This well-established principle was applied to the very problem now before the Court in *Public Clearing House* v. *Coyne*, *supra*. In addition to holding the fraud order legislation valid even if it reached some private mail, the Court held that the issue of interference with private mail could not be raised, since not presented by the facts of the case; in this connection the opinion states (194 U. S. at 510–511):

> Another answer to this argument, which seems to be conclusive, is that the fraud order in this case is not open to this objection, as the Postmaster General only forbids the postmaster at Chicago to pay any postal money orders, drawn to the order of the League of Equity and the Public Clearing House, or their officers or agents in their capacity as such, and to inform the remitter of any such postal money order that payment thereof has been forbidden, etc., and "to return all letters, whether registered or not, or other mail matter which shall arrive at your office directed to such concerns or their officers or agents as such, to postmasters at the office at which they were originally mailed." There is nothing in the order thus worded that would authorize the postmaster at

Chicago to return letters addressed to an individual unless addressed to such individual as officer or agent of the League of Equity of the complainants. There is nothing in this order that would authorize the interference with the private or domestic mail matter of individuals.

We submit that this Court is only required to pass upon the constitutionality of the Code provisions here involved in so far as they are sought to be applied in this case.

SUMMARY OF CONSTITUTIONAL ARGUMENT IN ANSWER TO QUESTION 2 (B)

The statutory provisions here involved have been in effect for three-quarters of a century, and have been held constitutional by this Court on several occasions.

I

Under the postal power Congress possesses the authority to police the mails in the public interest, at least to the same extent that it may police the channels of interstate commerce. The prevention of the use of the mails to defraud is undoubtedly a legitimate exercise of this regulatory power. And the returning to the sender of mail addressed to the defrauder is the most effective means of protecting the victimized public. Merely to punish the defrauder would be to lock the barn long after the horse had been stolen. Inasmuch as it may be impossible to segregate mail connected with the fraud from other mail

when the defrauder has not used a separate address for the former, Congress must possess the power to halt all commingled mail if it is to deal adequately with the fraud. Congress possesses the power to select means which will fully effectuate the exercise of its constitutional power even as against such commingling, particularly when the recipient possesses the power to establish a separate address for the mail connected with the fraud.

II

The statutory provisions do not violate the First Amendment. That Amendment, of course, does not apply to the refusal to pay postal money orders authorized by Section 732. And it is also clear that the Amendment does not protect fraudulent statements, and fraudulent commercial advertising in particular. Many cases establish that commercial advertising—even if not fraudulent—is not the kind of speech at which the First Amendment is directed. See especially, *Valentine* v. *Chrestensen*, 316 U. S. 52; *Jamison* v. *Texas*, 318 U. S. 413, 417; *Murdock* v. *Pennsylvania*, 319 U. S. 105, 110–111, and cases under the Federal Trade Commission Act.

The principle that the First Amendment prohibits "previous restraints" on speech is inapplicable. The cases under the Federal Trade Commission Act and other statutes demonstrates that the publication of fraudulent statements may

be enjoined, and even that advance licensing may be required for the distribution of advertising, whether or not fraudulent. The previous restraint doctrine is not an absolute one, and the public interest in preventing fraud is so great, as contrasted with the interest in safeguarding the type of written statements here concerned, as to bring the statute within the recognized exceptions to the previous restraint rule.

The fact that the fraud order applies to incoming mail rather than to the fraudulent advertising itself is not material. In so far as the recipient of the mail in concerned, he has no constitutional right to receive mail connected with his fraudulent scheme or mail which, because of his own conduct, cannot be separated therefrom. Moreover, he has no standing to rely on any theoretical interference with the constitutional rights of the senders of the mail, who are primarily his victims and who are the very persons whom the fraud order protects; significantly, they are not complaining here. In any event no constitutional rights of the senders are infringed. Firstly, the incoming mail, though innocent in itself, is an integral and essential part of the fraudulent scheme, and is as subject to governmental interception, as, for example, ransom payments. Secondly, the incoming mail is itself commercial in nature, inasmuch as it will consist of replies to respondent's advertisement

which are indistinguishable in their relation to the commercial enterprise from orders or inquiries sent in by customers in response to the advertising in a mail order catalogue.

And apart from this the First Amendment guaranties are not absolute. In a great many circumstances this Court has balanced the effect of a substantive regulation upon the essential freedom which the First Amendment preserves as against the public interest safeguarded by the regulation. Here the statute protects the public against fraud; on the other hand, the interference with the freedom of communication of the senders is narrowly confined to letters sent to a single address, most of which are related to the fraudulent scheme. There is thus no consequential impairment of their freedom of expression to counterbalance the benefit to the public—which consists largely of themselves—resulting from this most effective means of preventing fraud. These principles apply even if we assume that some mail unrelated to the fraud will also be returned to the senders as a result of commingling.

III

The fraud order statutes do not violate the due process clause of the Fifth Amendment since they are reasonable exercises of the legislative power to prevent the use of the mails to defraud. This is clearly true although the statutes operate

upon the mail addressed to the defrauder and upon innocent incoming mail commingled with that related to the fraud.

IV

The Fourth Amendment is irrelevant here since there is no search and seizure but a return of the unopened letters to the senders to whom they belong. The Sixth and Eighth Amendments and Article III, Section 2, Paragraph 3 are inapplicable, since they relate only to criminal cases. The fraud order statutes are designed to protect the public, and they do not become criminal sanctions because their effect may be to damage the perpetrator of the fraud.

THE CONSTITUTIONALITY OF THE STATUTORY PROVISIONS

Historical Background and Direct Precedents

The first predecessors of the statutory provisions here involved (now 39 U. S. C. Sections 259, 732), enacted in 1872 (17 Stat. 322, 323), authorized the Postmaster General to order the non-delivery of registered mail and the non-payment of money orders to persons he found to have conducted lotteries or schemes to obtain money by fraud through the mails. In 1895 the prohibition was extended from registered mail to all letters and other mail matter. 28 Stat. 963–964.

During the thirty-odd years following 1872 these statutory provisions were applied by the lower courts in a number of cases.[10] Their constitutionality first came before this Court in 1902, in *American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94, but the Court, assuming constitutionality, decided the case on other grounds without reaching the constitutional issues. In 1904, however, the Court passed upon the constitutional question in *Public Clearing House* v. *Coyne*, 194 U. S. 497, in which the statutes' validity was carefully considered and upheld. In *Leach* v. *Carlile*, 258 U. S. 138, the Court again gave effect to the statutory provisions. No constitutional objections had been raised by the parties, nor were any constitutional points argued. Nevertheless, Mr. Justice Holmes

[10] *Dauphin* v. *Key*, 11 D. C. (1 MacArthur and Mackey) 203 (1880); *New Orleans Nat. Bank* v. *Merchant*, 18 Fed. 841 (E. D. La. 1884); *Enterprise Sav. Ass'n* v. *Zumstein*, 64 Fed. 837 (S. D. Ohio, 1894), affirmed, 67 Fed. 1000 (C. C. A. 6, 1895); *Hoover* v. *McChesney*, 81 Fed. 472 (D. Ky., 1897); *Fairfield Floral Co.* v. *Bradbury*, 89 Fed. 393 (D. Me., 1898); *American School of Magnetic Healing* v. *McAnnulty*, 102 Fed. 565 (W. D. Mo.), reversed, 187 U. S. 94; *Missouri Drug Co.* v. *Wyman*, 129 Fed. 623 (E. D. Mo., 1904). Obviously this statute was applied in many instances which did not result in litigation. In an opinion to the Postmaster General, 21 Op. A. G. 313, February 24, 1896, the Attorney General, in holding a certain "bond and investment" company to be a lottery referred to "* * * the myriad of such companies which were springing up all over the country until they were checked by your action in refusing them the use of the mails" (p. 315).

(who had concurred in *Public Clearing House* v. *Coyne*) and Mr. Justice Brandeis dissented on the ground that the statutes contravened the First Amendment, although their opinion notes (p. 140) that "the statute under which fraud orders are issued by the Postmaster General has been decided or said to be valid so many times that it may be too late to expect a contrary decision." In the lower courts, before, and of course after, the *Public Clearing House* decision, the validity of the statutes has been upheld or assumed in a great many cases which it is unnecessary to cite.

We thus are dealing with statutory provisions which have been in force for seventy-five years, and which were held constitutional by this Court over forty years ago, and again twenty-five years ago. Although this, of course, is not in itself decisive of a constitutional question, particularly in view of the dissent of two most distinguished Justices, we submit that the judicial understanding for three-fourths of a century in dealing with a statute designed to protect the public against fraud is entitled to great weight. Moreover, apart from these direct precedents, we submit that the statutory provisions, particularly as here applied, are constitutional.

I

THE STATUTORY PROVISIONS HERE INVOLVED ARE A VALID EXERCISE OF THE POSTAL POWER[11]

A. UNDER THE POSTAL POWER CONGRESS MAY REGULATE THE USE OF THE MAILS IN THE PUBLIC INTEREST

It is by now well established that Congress possesses the authority to prohibit the use of the mails not only by products which might be physically dangerous to the postal service (such as explosive, inflammable or pestilent material), but also by matters regarded by Congress as deleterious to the public health, morals and welfare. See *Ex parte Jackson*, 96 U. S. 727; *In re Rapier*, 143 U. S. 110; *Public Clearing House* v. *Coyne*, 194 U. S. 497; *Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288; *Milwaukee Publishing Co.* v. *Burleson*, 255 U. S. 407. As Mr. Justice Brandeis recognized in his dissenting opinion in the case last cited (255 U. S., at 430):

> The power to police the mails is an incident of the postal power. Congress may, of course, exclude from the mails matter which is dangerous or which carries on its face immoral expressions, threats or libels. It may go further and through its power of exclusion exercise, within limits, general police power over the material which it carries, even though its regu-

[11] The questions of violation of the First, Fifth and other Amendments, are considered in Points II, III and IV, *infra*.

lations are quite unrelated to the business of transporting mails.

It is unimportant for present purposes to determine whether this power to police the mails exists because the Government is the proprietor of the business of carrying the mails and need not transport what it chooses not to transport, or because the postal power gives to Congress regulatory authority over the mails. All of the cases cited are consistent with either theory. Certainly the cases upholding the statutes which are directed to protecting the public against the use of the mails by swindlers are appropriate as exercises of the police power over the mails, and with respect to them it is unnecessary to argue that "the use of the mails is a privilege which may be extended or withheld on any grounds whatsoever." See *Hannegan* v. *Esquire,* 327 U. S. 146, 156; *Pike* v. *Walker,* 121 F. 2d 37 (App. D. C.), certiorari denied, 314 U. S. 625.

We think that in any event Congress possesses at least as much power "to forbid the use of the mails in aid of the perpetration of crime or immorality" (*In re Rapier,* 143 U. S. 110, 134), as to regulate interstate commerce to the same end.[12] And it has long been established that Con-

[12] "This power probably may be regarded as even more comprehensive than that exercised over interstate commerce, for the government's interest in the mails is proprietary as well as regulatory." *Electric Bond and Share Co.* v. *Securities and Exchange Commission,* 92 F. 2d 580, 588 (C. C. A. 2),

gress possesses the authority to deny the facilities of interstate transportation to products or persons even though such prohibitions "have the quality of police regulations". *Seven Cases of Eckman's Alterative* v. *United States,* 239 U. S. 510, 515; *United States* v. *Darby,* 312 U. S. 100, 114; *Hoke* v. *United States,* 227 U. S. 308, 322; *United*

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affirmed, 303 U. S. 419. The reasons for this are well stated in Cushman, *National Police Power Under The Postal Clause of the Constitution*, 4 Minn. Law Rev. 402, 420 (1920):

"If Congress possesses such police power by reason of its authority over a commerce which it does not create but merely regulates, it cannot be doubted that equal or even greater authority would be derived from the power to 'create' or 'establish' a postal system. It may be urged, in fact, that while the constitutional authority arising from the commerce and postal clauses is ample in both cases to support this type of legislation, a much stronger moral obligation rests upon Congress to protect the public health, morals, safety, and general welfare from the misuse of the mails than from the misuse of the facilities of interstate commerce. Two considerations support this view. The first is that the responsibilities arising from the fact of creation, ownership, and operation of an institution may be reasonably regarded as greater than those arising from a power merely to 'regulate' a system or institution which Congress did not create, does not own nor operate, and cannot destroy. The second is that the ordinary individual is in a much better position to protect himself from the misuse of interstate commerce than from the misuse of the mails. This is due to the essential differences between the two systems. Under normal circumstances the participation of the individual in the transactions of interstate commerce and his relations to interstate carriers result from a voluntary contractual relationship. Spurious or even harmful products may be sent to him, but rarely without his having bargained for the shipment of any products at all. A very different situation exists with respect to the

States v. *Carolene Products Co.*, 304 U. S. 144, 147; *Lottery Case*, 188 U. S. 321; *Hipolite Egg Co.* v. *United States*, 220 U. S. 45.

This power to regulate the mails for what may be regarded as police purposes—that is, the protection of the "public health, morals or welfare" (*United States* v. *Darby*, *supra*),—has frequently been exercised under the postal power as well as under the commerce power. Thus statutes are designed to exclude from the mails not only matter intended to defraud the public,[13] but obscene matter, [14] lottery tickets,[15] transactions in commodity futures except through boards of trade properly designated by the Secretary of Agriculture,[16] unregistered securities and securities not accompanied by a proper prospectus,[17] an improper prospectus,[18] the manipulation of secu-

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postal system. At practically negligible cost to the sender, grossly indecent letters or papers could be brought several times a day to the door of any person by an employee of the United States government and this without the previous knowledge and against the wishes of the recipient. Without depriving himself of all the conveniences arising from the regular visits of the postman a person might be quite unable to protect himself against this sort of abuse. It is not unreasonable to assert that the governmental authority which thus penetrates daily the very homes of the people must recognize a commensurate duty of protecting those homes from the distribution of noxious matter."

[13] 35 Stat. 1130, 18 U. S. C. 338.

[14] 35 Stat. 1129, as amended, 18 U. S. C. 334.

[15] 35 Stat. 1129, 18 U. S. C. 336.

[16] 42 Stat. 999, as amended, 7 U. S. C. 6.

[17] Securities Act, 48 Stat. 77, 906, 15 U. S. C. 77e.

[18] Securities Act, 48 Stat. 77, 906, 15 U. S. C. 77e.

rity prices with respect to securities listed on national exchanges, the use in connection with security dealings of deceptive devices, the use of proxies except in accord with proper regulations, the purchase or sale of securities over the counter except by registered brokers or dealers,[19] transactions by unregistered public utility holding companies and other described acts of such companies.[20]

These statutory provisions are unquestionably constitutional. *In re Rapier,* 143 U. S. 110, 134–135; *Badders* v. *United States,* 240 U. S. 391, 393; *Electric Bond and Share Co.* v. *Securities and Exchange Commission,* 303 U. S. 419, 442; *Jones* v. *Securities and Exchange Commission,* 79 F. 2d 617 (C. C. A. 2), reversed on other grounds, 298 U. S. 1; *Knowles* v. *United States,* 170 Fed. 409 (C. C. A. 8); *Rebhuhn* v. *Cahill,* 31 F. Supp. 47, 49 (S. D. N. Y.-three judge court); *Securities and Exchange Commission* v. *Torr,* 15 F. Supp. 315, 318–319 (S. D. N. Y.), reversed on other grounds, 87 F. 2d 446 (C. C. A. 2).

B. THE FRAUD ORDER STATUTES ARE A LEGITIMATE EXERCISE OF THE POSTAL POLICE POWER

Inasmuch as Congress possesses a police power over the mails, it undoubtedly possesses the power

[19] Securities Exchange Act, 48 Stat. 881, 885, 889–891, 895, 904, 15 U. S. C. 78e, 78i, 78j, 78n, 78o and 78dd.

[20] Public Utility Holding Company Act, 49 Stat. 803, 812, 814, 817, 823, 825, 827, 15 U. S. C. 79d, 79f, 79i, 79k (g), 79l and 79m (a) (b) (e) (f).

to prevent the use of the mails to defraud. This is established by the numerous cases giving effect to the statute imposing criminal penalties for fraudulent use of the mails (Crim. Code, sec. 215, 18 U. S. C. 338). Many of the statutes cited above police both the facilities of interstate commerce and the mails in order to protect the public against deception. Perhaps the closest parallel is the Federal Trade Commission Act, which, prior to its amendment in 1938, prohibited false advertising in interstate commerce (e. g., *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67; *Federal Trade Commission* v. *Standard Education Society*, 302 U. S. 112), but which was amended in that year so as to apply both to dissemination through interstate commerce and the mails. 52 Stat. 114, 15 U. S. C. 52.

1. *As applied to incoming mail*

The primary difference between the fraud order statutes and the other measures to which we have referred is that the former prevent mail from reaching the person engaged in the deceptive conduct, whereas the other statutes make it unlawful for him to use the facilities of commerce or the mails. But the one is obviously as reasonable a method of preventing the use of the mails to defraud as the other. Indeed, it is the only method of protecting the public against mail fraud which will

be fully effective, inasmuch as it is impossible physically to prevent a defrauder from depositing letters relating to his fraud in some of the thousands of mail boxes throughout the country. Furthermore, the government is never in a position to act until after the false representations have been published and distributed; stopping of future mailing of the misrepresentations will not protect that portion of the public which is responding to the prior publications.

The object of the fraud order provisions, as this Court recently stated in *Commissioner* v. *Heininger* "is to protect the public from fraudulent practices committed through the use of the mails. It is not their policy to impose personal punishment on violators". 320 U. S., at 474. The penal statutes may be sufficient in so far as punishing the defrauder himself is concerned, but inasmuch as such punishment occurs long after the event, it does not prevent the consummation of the fraud. The public is thus not adequately protected if the swindler is permitted to receive the proceeds of his fraudulent scheme through the mails up until such time as he may be imprisoned. And, of course, once he receives the proceeds of his unlawful activity, it is impossible for the victims to recover what they have unwittingly been duped into paying.

The fraud order statutes protect the victims of the fraud by requiring that mail addressed

to the swindler be returned to the senders. Inasmuch as neither criminal provisions, which only lock the barn long after the horse has disappeared, nor prohibitions against mailing, which could not be as effectively enforced, would adequately accomplish this purpose, it clearly was not unreasonable for Congress to use the one effective device available to it in protecting the innocent public from the use of the mails to defraud.

This is especially important, because of the vast amount of business transacted through the mails and of the ease with which the mails may be used to defraud unless they are adequately policed. For the swindler using the mails need never meet his victim; he can remain in a distant part of the country and spread his lies broadside in the knowledge that some persons will be duped. The number of fraudulent schemes perpetrated through the mails is, of course, immeasurable, but there can be no question that it has been tremendous.[21]

2. *As applied to commingled mail*

It may be said that the statutory provisions go too far because they may reach private mail or other mail matter having nothing to do with the fraudulent scheme. Inasmuch as the order involved in this case does not extend to mail or moneys not related to the puzzle contest, this issue is not

[21] See *Crane* v. *Nichols*, 1 F. 2d 33 (S. D. Tex.); American Medical Association, *Medical Mail-Order Concerns* (1924); Baarslag, *Robbery by Mail* (1938).

now before the Court. See pp. 4–5, 7, 18–20, *supra*. Nevertheless, in view of respondents' attack upon the validity of the statutes as a whole, it seems advisable to show that this possibility of reaching mail not related to the fraud does not render the statutes invalid.

It is, of course, axiomatic that in executing its constitutional powers, Congress may adopt means which will make the exercise of its authority effective. We have shown that a reasonable —and indeed the most effective—means of protecting the public against the fraudulent use of the mails is to prevent the delivery to the swindler of incoming mail. This practicable and easily enforceable method of safeguarding the public could not be employed if it were permissible to halt only mail connected with the fraud. For in *Ex parte Jackson*, 96 U. S. 727, 735, it was implied that the Fourth Amendment proscribed the opening of mail prior to its delivery and the statutes do so specifically. As this Court stated in *Public Clearing House* v. *Coyne*, 194 U. S. at 510, in discussing this precise question:

> Nor do we think the law unconstitutional, because the Postmaster General may seize and detain all letters, which may include letters of a purely personal or domestic character, and having no connection whatever with the prohibited enterprise. In view of the fact that by these sections the postmaster is denied permission to

> open any letters not addressed to himself, there would seem to be no possible method of enforcing the law except by authorizing him to seize and detain all such letters. It is true it may occasionally happen that he would detain a letter having no relation to the prohibited business; but where a person is engaged in an enterprise of this kind, receiving dozens and perhaps hundreds of letters every day containing remittances or correspondence connected with the prohibited business, it is not too much to assume that, *prima facie* at least, all such letters are identified with such business. A ruling that only such letters as were obviously connected with the enterprise could be detained would amount to practically an annulment of the law, as it would be quite impossible, without opening and inspecting such letters, which is forbidden, to obtain evidence of the real facts. * * *

The person who uses the mails to defraud, of course, has it within his power to establish a separate, segregable address for mail related to the fraudulent scheme. If he knew that a fraud order could not be issued if such mail and innocent mail might both be sent to the same address, he not only would have no incentive to establish addresses which would permit segregation but a very strong incentive not to do so. By using his home address, to which private mail might be delivered, or a business address to which

mail not relating to the fraud might also be sent, he would thus completely free his scheme from the otherwise effective means of protecting the public created by the statutes. On the other hand, if the statutes apply to all mail where the mail is intermingled, as the *Public Clearing House* case holds they do, it is possible for a swindler to protect his private or innocent communications by the use of a separate trade name or a separate address for the fraudulent scheme. Furthermore, even after a fraud order has been entered against him, a swindler may apply to the Postmaster General for relief as to addresses not necessarily involved in the fraudulent scheme. In a great many instances in the past, even prior to the new regulation, the Postmaster General has, on application, revoked orders in so far as they affected the personal name of a respondent or a personal address.[22]

It is, of course, established law that the power of Congress over a subject matter cannot be defeated because of the impossibility of separating that which Congress may regulate from transactions not otherwise subject to federal authority. A familiar exercise of such power is the regulation of intrastate transactions which are so commingled with or related to interstate commerce that all must be regulated if the interstate commerce is to be effectively controlled." *United States* v.

[22] See letter, Appendix B, *infra*, pp. 79–80.

Darby, 312 U. S. 100, at 121, and cases cited. This principle clearly applies not only to such economic inseparability as was involved in the *Shreveport Case,* 234 U. S. 342, and *United States* v. *Wrightwood Dairy Co.,* 315 U. S. 110, but even more clearly to cases of physical inseparability (*Currin* v. *Wallace,* 306 U. S. 1; *Thornton* v. *United States,* 271 U. S. 414). And the principle, which is derived from the "necessary and proper" clause of the Constitution, is not limited to the commerce power but undoubtedly extends to the other powers of Congress (*McCullough* v. *Maryland,* 4 Wheat. 316; *Jacob Ruppert, Inc.* v. *Caffey,* 251 U. S. 264; *Everard's Breweries* v. *Day,* 265 U. S. 545, 560; *Westfall* v. *United States,* 274 U. S. 256, 259). The same principle is applicable to the various powers of the states (*Queenside Hills Co.* v. *Saxl,* 328 U. S. 80, 83; *Booth* v. *Illinois,* 184 U. S. 425; *Otis* v. *Parker,* 187 U. S. 606, 609; *St. John* v. *New York,* 201 U. S. 633; *Silz* v. *Hesterberg,* 211 U. S. 31; *Murphy* v. *California,* 225 U. S. 623; *Purity Extract and Tonic Co.* v. *Lynch,* 226 U. S. 192, 201–202).

Even apart from this familiar constitutional principle, the ordinary common law concept of confusion of goods demonstrates that the person who through his own fault causes articles to be commingled must suffer any loss which occurs as a result of the commingling. *The "Idaho",* 93 U. S. 575, 585–586; *Fiman* v. *State of South*

Dakota, 29 F. 2d 776 (C. C. A. 8), certiorari denied, 279 U. S. 841; *National Atlas Elevator Co.* v. *United States*, 97 F. 2d 940, 942 (C. C. A. 8); *Vest* v. *Bond Bros.*, 223 Ala. 552, 137 So. 392; *Barth Mercantile Co.* v. *Jaramillo*, 46 Ariz. 365, 51 P. 2d 252, affirmed on rehearing, 48 Ariz. 94, 59 P. 2d 328; *In re Thompson*, 164 Iowa 20, 29–30, 145 N. W. 76; *Ryder* v. *Hathaway*, 38 Mass. (21 Pick.) 298, 306. This is particularly true when otherwise a wrongdoer might escape responsibility for his misconduct by reason of the commingling.

For all of the above reasons we submit that the fraud order statutes are appropriate exercises of the postal power of Congress, even in so far as they apply to commingled mail unrelated to the fraudulent scheme.

II

THE STATUTORY PROVISIONS DO NOT VIOLATE THE FIRST AMENDMENT

Respondents assert that the fraud order statutes violate the First, Fourth, Fifth, Sixth and Eighth Amendments to the Constitution and also Article 3, Section 2, Paragraph 3. Of these only the First Amendment requires extended discussion.

A. THE PROHIBITION OF THE PAYMENT OF MONEY ORDERS DOES NOT VIOLATE THE FIRST AMENDMENT

Two statutory provisions are here involved, Sections 259 and 732 of Title 39 of the United States Code. Section 732 provides that the Postmaster

General may order that money orders drawn to or in favor of the person found to have engaged in fraudulent conduct shall not be paid but shall be returned to the remitters named in the money orders. Clearly the First Amendment does not protect any right to the receipt of money through the Post Office Department. The refusal to pay money orders in no way touches upon infringement of free speech or a free press; it has no connection with the dissemination of information, ideas and opinion which is within the protection of the First Amendment. Thus respondents' objections based upon the First Amendment are not applicable to Section 732. It should be noted, however, that this section does not reach all money forwarded by victims of the fraud but only postal money orders. Victims will not be protected as to sums sent in the form of cash or checks unless ordinary mail to the swindlers can also be intercepted.

B. THE FIRST AMENDMENT DOES NOT PROTECT A FRAUDULENT ADVERTISING SCHEME CONDUCTED THROUGH THE MAILS

Argument is not necessary to demonstrate that the First Amendment, which protects the freedom of speech and of the press, does not immunize fraudulent statements, whether oral or in writing. Although fraudulent representations inevitably take the form of oral or written statements, fraud may nevertheless be forbidden, both

by the national government acting within its constitutional sphere and by the states.

Here, moreover, we are not concerned with fraud in general, but with fraud as an ingredient of commercial advertising. As in the present case, a fraud order is almost invariably directed against fraudulent practices or schemes of persons who are engaged in commercial enterprises and are interested in their own profits. The imposition of such a restraint on commercial advertising to eliminate fraudulent practices, does not, we submit, violate the First Amendment, since commercial advertising, soliciting, canvassing, etc., taken alone, independently of whether it is fraudulent, is not the kind of "speech" which is protected by the First Amendment.[23] 1 Chafee, *Government and Mass Communications* (1947), pp. 25, 286, 291.

Although the "freedom of speech" guaranteed by the First Amendment is allowed the broadest scope, the principle that "sales talk"[24] and other purely commercial activity not directed at the dissemination of information or ideas do not enjoy the protection of that guaranty is so firmly

[23] "The court could have announced as a rule what is probably true, independent of judicial acceptance, that the freedom of the press does not include freedom of advertisement." Lindsay Rogers, *The Postal Power of Congress* (Johns Hopkins University Studies in Historical and Political Science, Series XXXIV, No. 2, 1916), p. 117. We do not suggest that the First Amendment is inapplicable to all discussion of commercial or economic activities. See *Thomas v. Collins*, 323 U. S. 516, 541, 545, 549.

[24] The term is Professor Chafee's.

rooted in our judicial system,[25] that it appears no longer to be open to question. Extensive research has failed to disclose any reported decisions holding the contrary, and as a matter of fact the question of freedom of speech as applied to commercial advertising is almost never raised. Usually the decisions which do consider constitutional problems in connection with prohibitions or regulatons directed against commercial advertising are concerned with deprivation of property or claims of discrimination. *Packer Corporation* v. *Utah*, 285 U. S. 105; *St. Louis Poster Adv. Co.* v. *St. Louis*, 249 U. S. 269; *Cusack Co.* v. *City of Chicago*, 242 U. S. 526; *Mutual Film Corp.* v. *Ohio Industrial Comm.*, 236 U. S. 230; *Fifth Ave. Coach Co.* v. *New York*, 221 U. S. 467; *San Francisco Shopping News Co.* v. *South San Francisco*, 69 F. 2d 879 (C. C. A. 9), certiorari denied, 293 U. S. 606; *Green River* v. *Fuller-Brush Co.*, 65 F. 2d 112 (C. C. A. 10); *Commonwealth* v. *Kimball*, 299 Mass. 353; *People* v.

[25] It is clear that "speech" does not include all manner of discourse. Cf. *Chrestensen* v. *Valentine*, 122 F. 2d 511, 525 (C. C. A. 2) (Frank J. dissenting), reversed, 316 U. S. 52. In addition to the exclusion of sales talk and other commercial activity there are other classes of speech, "* * * the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 571–572; *Cantwell* v. *Connecticut*, 310 U. S. 296, 309–310.

Johnson, 117 Misc. 133; *Coughlin* v. *Sullivan*, 100 N. J. L. 42; *Sieroty* v. *Huntington Park*, 111 Cal. App. 377; 1 Chafee, *Government and Mass Communications* (1947) pp. 25, 291; Lindsay, *Handbill Ordinances*, 39 Mich. L. Rev. 561, *passim*. It would appear that Judge Frank's statement in his dissenting opinion in *Chrestensen* v. *Valentine*, 122 F. 2d 511, 524 (C. C. A. 2), reversed, 316 U. S. 52, that "Thomas Paine, John Milton and Thomas Jefferson were not fighting for the right to peddle commercial advertising" succinctly states the historical truth that the freedom of speech guaranteed by the First Amendment has throughout been associated with non-commercial literature and not with mere advertising matter. For, as this Court stated in *Grosjean* v. *American Press Co.*, 297 U. S. 233, 249–250, quoting from Judge Cooley: "'The evils to be prevented were not the censorship of the press merely, but any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens.' 2 Cooley's *Constitutional Limitations*, 8th ed., p. 886."

This Court, while affirming and protecting from encroachment the "freedom of speech" protected by the First Amendment, has simultaneously reaffirmed this firmly rooted principle that purely commercial advertising and canvassing is not

protected by that Amendment.[28] *Valentine* v. *Chrestensen*, 316 U. S. 52, squarely presented the question. In that case, respondent wished to distribute on the streets of New York City handbills advertising his former United States Navy submarine and soliciting visitors at a stated admission fee. Upon being advised by the Police Commission that such distribution would violate the prohibition in the Sanitary Code against distributing commercial and business advertising matter on the streets, he prepared double-faced handbills, one face of which was devoted to commercial advertising and the other to a protest against the denial of wharfage facilities at the city piers. These handbills the Police Commissioner also regarded as violative of the Sanitary Code, although he informed respondent that he (respondent) might freely distribute handbills solely devoted to information or public protest. Respondent then brought suit to enjoin the Police Commissioner from enforcing the applicable provision of the Sanitary Code against his distribution of these double-faced handbills. The court below by a 2–1 decision affirmed the order of the district court enjoining the Police Commissioner. The majority of that court, in addition to pointing out the difficulties involved in determining

[28] Lindsay, *Handbill Ordinances*, 39 Mich. L. Rev. 561 (1941) reviewing the authorities, makes clear the uniform assumption that commercial distribution is not protected by the First Amendment.

whether the purpose of the handbill was primarily commercial, relied on *Schneider* v. *State*, 308 U. S. 147, which it construed as invalidating absolute prohibitions on even purely commercial advertising while permitting reasonable regulation thereof. This Court, however, summarily reversed this decision and, construing the handbills as purely commercial advertising, held that they were without the protection of the First Amendment. In its unanimous opinion, the Court stated (316 U. S., at 54–55):

> This court has unequivocally held that the streets are proper places for the exercise of the freedom of communicating information and disseminating opinion and that, though the states and municipalities may appropriately regulate the privilege in the public interest, they may not unduly burden or proscribe its employment in these public thoroughfares. *We are equally clear that the Constitution imposes no such restraint on government as respects purely commercial advertising.* Whether, and to what extent, one may promote or pursue a gainful occupation in the streets, to what extent such activity shall be adjudged a derogation of the public right of user, are matters for legislative judgment. The question is not whether the legislative body may interfere with the harmless pursuit of a lawful business, but whether it must permit such pursuit by what it deems an undesirable invasion of, or interference

> with, the full and free use of the highways by the people in fulfillment of the public use to which streets are dedicated. If the respondent was attempting to use the streets of New York by distributing commercial advertising, the prohibition of the code provision was lawfully invoked against his conduct. [Italics supplied.]

Although the facts and result in *Jamison* v. *Texas*, 318 U. S. 413, differed from the *Chrestensen* case, the problem there again involved the determination of the primary purpose of handbills, which were being distributed on the streets. One side of the handbill there involved was an invitation to attend a gathering of the Jehovah's Witnesses. On the other side, the invitation was repeated and two books were described explaining the Witnesses' interpretation of the Bible, followed by a statement that the books would be mailed "Postage prepaid on your contribution of 25¢." On behalf of the State of Texas, it was contended *inter alia* that the activity would be forbidden because the leaflets include "commercial advertising of books which the distributor is offering for sale." In rejecting that contention the Court, speaking through Mr. Justice Black, reaffirmed and distinguished the *Chrestensen* decision, saying (p. 417):

> The states can prohibit the use of the streets for the distribution of purely commercial leaflets, even though such leaflets

may have "a civic appeal, or a moral platitude" appended. *Valentine* v. *Chrestensen*, 316 U. S. 52, 55. They may not prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because the handbills invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes.

The Court went on to dispose of the difficulty encountered by the lower court in the *Chrestensen* case in regard to the *Schneider* case by pointing out that even if the handbills carrying a notice of a public meeting contained a statement of an admission fee, they do not thereby become commercial advertising outside the protection of the First Amendment. *Schneider* v. *State*, 308 U. S. 147, 154, 162, 163. This explanation obviously was intended in no way to limit or qualify the Court's statement in the *Schneider* case that its ruling there was "not to be taken as holding that commercial soliciting and canvassing may not be subjected to such regulation as the ordinance requires." 308 U. S., at 165. See Note, 53 Harv. L. Rev. 487, 488.

As a result of the fact that it is so well established that commercial advertising and other such activities are not protected by the First Amendment, the issues brought before the Court and passed on by it are formulated not in terms

of whether commercial activities are protected by that Amendment, but rather whether in the particular factual situation, the activities there presented are primarily commercial and hence outside the protection of the First Amendment, or involve an exercise of the freedom of religion or speech and thus are within that Amendment. This apparently was considered to be the general question confronting this Court in the cases involving the constitutionality of license taxes on book vendors as applied to members of Jehovah's Witnesses offering to sell religious tracts.

Thus in the first opinion in *Jones* v. *Opelika*, 316 U. S. 584, Mr. Justice Reed, writing for the majority of the Court which sustained the tax as valid, pointed up the problem by stating, after citing the *Chrestensen* case, that "when proponents of religious or social theories use the ordinary commercial methods of sales of articles to raise propaganda funds, it is a natural and proper exercise of the power of the State to charge reasonable fees for the privilege of canvassing." (316 U. S., at 597.) And both Chief Justice Stone and Mr. Justice Murphy, dissenting, indicated that although their conclusion differed from that of the majority, as far as they were concerned the question was whether the constitutional protection of the Bill of Rights may "be evaded by classifying with business callings an activity whose sole purpose is the dissemination

of ideas, and taxing it as business callings are taxed. The immunity which press and religion enjoy may sometimes be lost when they are united with other activities not immune," citing the *Chrestensen* case (316 U. S. at 608, 615, 619).

On rehearing, the judgments entered in *Jones* v. *Opelika* and its companion cases were vacated *per curiam,* and the municipal ordinances imposing the license taxes were held unconstitutional in the circumstances there presented. 319 U. S. 103. However, in the companion case of *Murdock* v. *Pennsylvania,* 319 U. S. 105, which dealt with the same general factual situation and in which the ordinance was likewise held unconstitutional, the majority of the Court apparently still considered the basic issue before it to be whether the activity involved was religious and protected by the First Amendment, or commercial and hence outside that Amendment. Mr. Justice Douglas, writing for the majority, held that the activity was protected by the First Amendment. His opinion states (319 U. S., at 110–111):

> * * * Situations will arise where it will be difficult to determine whether a particular activity is religious or purely commercial. The distinction at times is vital. As we stated only the other day, in *Jamison* v. *Texas,* 318 U. S. 413, 417, "The states can prohibit the use of the streets for the distribution of purely commercial leaflets, even though such leaflets may have 'a civic

> appeal, or a moral platitude' appended. *Valentine* v. *Chrestensen,* 316 U. S. 52, 55." * * * As we have said, the problem of drawing the line between a purely commercial activity and a religious one will at times be difficult. On this record it plainly cannot be said that petitioners were engaged in a commercial rather than a religious venture. * * *

In *Martin* v. *Struthers,* 319 U. S. 141, 142n, the Court also noted that:

> This ordinance was not directed solely at commercial advertising. Cf. *Valentine* v. *Chrestensen,* 316 U. S. 52; *Green River* v. *Fuller Brush Co.,* 65 F. 2d 112.

We add only that while there may have been difficulties in drawing the line between religious and commercial activities in those cases, which involved the sale of religious literature, there is no such difficulty with ordinary commercial advertising.

Since commercial advertising, whether or not fraudulent, is not protected by the First Amendment, it follows *a fortiori* that restraints on fraudulent schemes sponsored by commercial enterprises likewise are not protected by the First Amendment. This is particularly true since the exploitation of consumers or the public through fraudulent practices is recognized as being contrary to public policy and subject to governmental limitation. "To fail to prohibit such evil practices would be to elevate deception in business

and to give it the standing and dignity of truth." *Federal Trade Commission* v. *Standard Education Society*, 302 U. S. 112, 116; see also *Federal Trade Commission* v. *Keppel & Bro.*, 291 U. S. 304, 313; *Cantwell* v. *Connecticut*, 310 U. S. 296, 306. It is presumably for this reason that the action taken by the Federal Trade Commission and the Food and Drug Administration against misleading advertising or misbranding has never even been attacked as an infringement of the freedom of speech guaranteed by the First Amendment. Many cases under those statutes attest to the fact that the Federal Government may prohibit false advertising or require accurate advertising or labelling (which amounts to the same thing) without in the slightest way contravening the guarantees of the First Amendment. E. g., *Federal Trade Commission* v. *Standard Education Society*, 302 U. S. 112; *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67; cf. *Federal Securities Administrator* v. *Quaker Oats Co.*, 318 U. S. 218.[27]

[27] Compare *Scientific Mfg. Co.* v. *Federal Trade Commission*, 124 F. 2d 640, 644 (C. C. A. 3), with *Perma-Maid Co.* v. *Federal Trade Commission*, 121 F. 2d 282 (C. C. A. 6). The *Scientific Mfg.* case held that the Federal Trade Commission Act did not apply to false representations representing the publishers' honest opinion as to a product with which he was not in competition, inasmuch as the representations were not intended to be utilized commercially to mislead or deceive the public. The court distinguished the *Perma-Maid*

C. THE FACT THAT THE FRAUD ORDER APPLIES TO INCOMING MAIL RATHER THAN TO THE FRAUDULENT ADVERTISEMENTS THEMSELVES IS NOT MATERIAL

We have heretofore sought to show that respondents' fraudulent advertising scheme is not protected by the First Amendment. In fact, of course, the fraud orders operate upon the letters addressed to the swindlers rather than directly upon the false advertising. As we have seen, this prohibition against the delivery of mail is much the most practicable and effective method of protecting the public against the fraudulent use of the mails.

1. *Respondents have no constitutional right to receive mail sent as a result of their fraudulent representations*

We submit that the First Amendment clearly does not protect the right of a defrauder to receive through the mails the funds [29] or other mail matter sent to him as a result of his false representations. The incoming mail contains the fruits of his fraud, and he should have even less right to complain that his freedom of communication is being interrupted so as to protect his victims than if the restraint

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case, which involved the identical representations when used by a salesman to induce customers to buy a particular product.

[29] The prohibition against the payment of money orders alone would not insure the return to the senders of sums obtained by means of the false representations inasmuch as many victims would transmit money either in cash or by check. See pp. 39–40, *supra*.

was on his own misrepresentation. The First Amendment does not prevent government officials from returning to the victims the proceeds of a fraudulent scheme before the defrauder can get his hand upon them.

It may be urged that this does not dispose of the case (1) because the fraud order interferes with the freedom of communication of the senders of the undelivered mail, and (2) because it affects mail other than that connected with the fraud. We shall consider each of these objections.

2. *The Rights of the Senders*

A. RESPONDENTS HAVE NO STANDING TO ALLEGE THAT THE CONSTITUTIONAL RIGHTS OF THE SENDERS ARE INFRINGED

In the first place we submit that respondents are hardly in a position to invoke the constitutional right to free expression of the senders of the undelivered mail, who are the victims of respondents' scheme and who are themselves not complaining. This Court has stated, citing many cases, that: "* * * it is the well-settled rule of this court that it only hears objections to the constitutionality of laws from those who are themselves affected by its alleged unconstitutionality in the feature complained of." *Jeffrey Mfg. Co.* v. *Blagg*, 235 U. S. 571, 576. See also *Virginian Ry.* v. *System Federation*, 300 U. S. 515, 558; *Erie R. Co.* v. *Williams*, 233 U. S. 685, 697; *Rail & River Coal Co.* v. *Yaple*, 236 U. S. 338, 349; *Blair* v. *United States*, 250 U. S. 273, 282; *Blackmer* v. *United*

States, 284 U. S. 421, 442. This principle was recently reaffirmed in the *Virginian Ry.* case, *supra,* wherein the Court stated: "The railroad can complain only of the infringement of its own constitutional immunity, not that of its employees."

The *Jeffrey* and *Viriginian* cases are closely analogous. Each of them involved statutes designed to afford employees additional rights against their employers. In each case the employer against whom the statute was invoked sought to defend on the ground that the constitutional rights of the employees, or of some of them, were violated, and that as a result of unconstitutionality in the alleged respect the statutory provisions were wholly void. In those cases, as in this one, although the compiainant was harmed by the statute he was not affected by the particular constitutional objection under consideration. It was obviously anomalous for the Court to pass upon a claim of deprivation of the constitutional rights of the victimized class at the exclusive instance of the persons against whom the victims were being protected. There is as much reason for the Court to refuse to do so here.

In his dissenting opinion in *Leach* v. *Carlile,* 258 U. S., at 140, Mr. Justice Holmes cited *Buchanan* v. *Warley,* 245 U. S. 60, in support of the right of the recipients to invoke the constitutional rights of the senders of the letters. But in the case cited the white plaintiff had

entered into a contract to sell his property to a colored person, and the ordinance discriminating against colored people, if valid, interfered with his right to sell his property as well as with the right of the colored person to occupy it. He was thus relying upon a direct impairment of his own property rights, not upon a violation of the rights of Negroes. In the instant case we have already demonstrated that no constitutional right of the recipients is violated. *Buchanan* v. *Warley* itself indicates that to the extent that respondents here must rely on an alleged interference with the rights of senders of the letters they come "* * * within the class wherein this court has held that where one seeks to avoid the enforcement of a law or ordinance he must present a grievance of his own, and not rest the attack upon the alleged violation of another's rights." (245 U. S., at 73.)

B. THE FRAUD ORDER DOES NOT UNCONSTITUTIONALLY INTERFERE WITH THE SENDERS' FREEDOM OF COMMUNICATION

Even if we assume that respondents have standing to claim that the constitutional rights of the senders are infringed there would be no substance to the contention.

(i) *The incoming mail was an integral part of the fraudulent scheme.*—In the first place, the incoming mail was an integral part of the fraudulent scheme. In this case the mail addressed to the Puzzle Contest and the Puzzle Contest Editor would contain contest fees, the puzzles themselves

(presumably sent with the fees), and inquiries as to the contest. Even though the senders of these letters would not be violating any law, the letters are essential to the success of the fraud; indeed they are its very object. If the First Amendment does not protect fraudulent commercial advertising—that is, dishonest statements made to induce persons to part with their money—we think that it also does not protect the receipt by the defrauders of the replies from the victims of the scheme. Thus it is undoubtedly within the authority of the legislative branch of the Government to prohibit the receipt by kidnappers of communications with respect to ransoming of the victims, or by lotteries of incoming contributions relating to the unlawful scheme without running afoul of the First Amendment—and this irrespective of whether the payment of the ransom by the victim's family or the transmission of payment for the lottery tickets is itself independently illegal. And the power is not any the less a lawful means of defending the public against the vices of lotteries and kidnapping because the senders of the communications may not wish them to be intercepted.

A fraudulent scheme which consists both of outgoing false representations and the incoming fruits of the misrepresentations falls in the same category. That the letters are an inherent part of the scheme is shown by the fact that the defrauder may be punished because he has caused

his victim to use the mails whether or not he has used them himself. *United States* v. *Guest*, 74 F. 2d 730 (C. C. A. 2), certiorari denied, 295 U. S. 742; *Corbett* v. *United States*, 89 F. 2d 124 (C. C. A. 8); *Stapp* v. *United States*, 120 F. 2d 898 (C. C. A. 5); *Kann* v. *United States*, 323 U. S. 88, 94.[29] Cf. *United States* v. *Sheridan*, 329 U. S. 379.[30]

(ii) *The incoming letters do not contain speech protected by the First Amendment.*—Apart from this, even if we assume that the incoming letters are not a part of the fraudulent scheme, it does not follow that the First Amendment guarantees the freedom of such communications, for those incoming letters are themselves not expressions of that type of speech which is protected by the First Amendment. They consist of replies to respondents' advertisements which would contain contest fees and puzzles and inquiries about the contest. They thus relate to the same commercial transactions as the false advertising itself and are as much related to the commercial enterprise as are the orders or inquiries sent in by pro-

[29] In the *Kann* case the use of the mails by the bank was after the fraud had been consummated; the Court noted that: "The case is to be distinguished from those where the mails are used prior to, and as one step toward, the receipt of the fruits of the fraud, such as *United States* v. *Kenofskey*, 243 U. S. 440." (323 U. S. at p. 94).

[30] Although this case arose under a statute relating to interstate commerce, the transmission of the checks was undoubtedly through the mails.

spective purchasers in response to the advertising in a mail order catalogue. They thus fall within the class of commercial statements not protected by the First Amendment.

To the extent that what has been said with reference to the character of the incoming letters is not wholly accurate in the sense that there may be some small element of "speech" contained in those letters, the "'accepted constitutional doctrine that these fundamental human rights are not absolutes'" (*United Public Workers* v. *Mitchell,* 330 U. S. 75, 95) comes into play. For whatever element of protected speech is contained in the letters, it is strikingly insubstantial as compared with the legitimate interest of the Government in protecting the public against fraud.

Where a substantive constitutional power would authorize some restrictions upon speech or communication, this Court necessarily balances the interests involved—the extent and importance of the impairment of the essential freedoms guaranteed by the Constitution as against the need for effectuation of the substantive power also authorized by the Constitution. See *Pennekamp* v. *Florida,* 328 U. S. 331, 336. Thus in *Prince* v. *Massachusetts,* 321 U. S. 158, this Court held that the State could prohibit religious activities in the public streets by children because of its power over the wellbeing of children, even though the same activities by adults would be

protected by the First Amendment. See also *Cantwell* v. *Connecticut*, 310 U. S. 296, 306, in which the Court stated:

> * * * Without doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.

In *United Public Workers* v. *Mitchell, supra*, the Court was concerned with the power of Congress to control the conduct of government employees in a manner which would have been in violation of the First Amendment if applied to the public generally. In the cases involving the authority of courts to punish for criticism of judicial acts during the course of pending litigation the Court has been faced with the necessity of weighing the effect of the criticism upon the impartial and ordinary administration of justice as against the guaranty of a free press. *Bridges* v. *California*, 314 U. S. 252; *Pennekamp* v. *Florida*, 328 U. S. 331; *Craig* v. *Harney*, 331 U. S. 367. That the right to free speech may be restricted in order to prevent violence and disorder is, of course, not open to doubt. *Chaplinsky* v. *New Hampshire*, 315 U. S. 568; *United Public Workers* v. *Mitchell, supra*. And the cases holding picketing to be a form of speech protected by the First Amendment have recognized that

not only violence but false representations are not "constitutional prerogatives." *Cafeteria Employees Union* v. *Angelos*, 320 U. S. 293, 295; *Thornhill* v. *Alabama*, 310 U. S. 88, 104.

It is to be noted that these cases and many others which stress the importance of the First Amendment are concerned with "the liberty to discuss publicly and truthfully matters of public concern" (*id.*, at 101), with the dissemination of ideas and information. Thus *Near* v. *Minnesota*, 283 U. S. 697, and the contempt cases involved such vital matters as the right of the press to criticize public officials, one of the basic liberties which the First Amendment was meant to safeguard.

We think there can be no question as to how these principles should be applied here—even if it be assumed *arguendo* (but in our view incorrectly) that statements made in connection with a fraudulent advertising scheme are of a type to which the First Amendment applies. For on the one hand there is the undoubted constitutional power to protect the public against fraud and deception—a governmental authority as well recognized as the power to prevent violence and disorder. And that authority is here being applied not to any allegedly fraudulent statement in the discussion of public issues, or in the criticism of public officials, or in the attempt to disseminate the ideas of religious or labor organizations. Here the restriction upon the delivery of mails is desired solely for the purpose of guard-

ing the public against commercial enterprises found to have used the mails to defraud. The restriction applies to a single means of communication and only to the particular address to which it must relate if the public is to be protected, after a finding that that address is being used in connection with a fraudulent scheme. Since most mail sent to the proscribed address would normally relate to the fraudulent scheme, the subject matter of the prohibition is narrowly confined.

It is thus apparent that the freedom of speech and communication of the senders of such mail, upon which respondents must rely, is impaired only to the slightest extent. The senders, most of whom are the victims of the fraudulent scheme, are precluded from writing letters and sending money to a single enterprise; if they send money, their rights are "impaired" by having it returned to them. The primary subject which the fraud order will have the effect of preventing them from "discussing" is the fraudulent contest. And, as we have seen, the object of the scheme is their own protection and none of them are complaining. On the contrary, the Post Office Department, institutes its proceedings under the statutes here involved as a result of complaints from the class whose constitutional rights the statutes are alleged to have infringed (*e. g.* R. 84).

Clearly in these circumstances any interference

with the freedom of speech of the senders of the letters is so negligible as to be in practical effect non-existent. Certainly it does not in the slightest counterbalance the benefit to the public interest from using the only effective method of completely protecting the public against being fleeced as a result of the fraudulent use of the mails.

The same conclusion follows if the balancing of interests is expressed in terms of the "clear and present danger" test.[21] For under that test, as classically stated:

> The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. [*Schenck* v. *United States*, 249 U. S. 47, 52].[22]

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[21] In *Pennekamp* v. *Florida*, 328 U. S. 331, 336, the Court seemingly assimilated the "clear and present danger" test to the balancing of the conflicting constitutional interests, when it stated that "under any one of the phrases ["clear and present or a grave and immediate danger, a real and substantial threat, one which is close and direct"], reviewing courts are brought in cases of this type to appraise the comment on a balance between the desirability of free discussion and the necessity for fair adjudication, free from interruption of its processes."

[22] For other cases applying the test, see *Herndon* v. *Lowry*, 301 U. S. 242, 256; *Thornhill* v. *Alabama*, 310 U. S. 88, 105; *Cantwell* v. *Connecticut*, 310 U. S. 296, 311; *Bridges* v. *California*, 314 U. S. 252, 261; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 571; *Hartzel* v. *United States*, 322 U. S. 680, 687; *Thomas* v. *Collins*, 323 U. S. 516, 527; *Pennekamp* v. *Florida*, 328 U. S. 331, 335, 352–353; *Craig* v. *Harney*, 331 U. S. 367.

Unquestionably mail fraud is a "substantive evil that Congress has a right to prevent", and both the fraudulent representations and the incoming mail to the person making them are clearly and presently, or directly and immediately, calculated to bring about the evil. There can thus be no question but that the clear and present danger standard is satisfied.

3. *The statutes do not violate the First Amendment because the fraud orders may apply to commingled mail not related to the fraud*

In this case the fraud order will apply, as we have shown, *supra,* pp. 3–4, only to money sent in to respondents' contest and to mail addressed to the Contest and the Contest Editor. We do not believe that we are faced with a situation in which private or innocent mail unrelated to the fraudulent scheme will also be halted. But if the contrary be assumed, what we have said would apply with only slightly less force.

For, on the one hand, when a person who uses the mail to perpetrate a fraudulent scheme employs an address at which innocent mail will inevitably be commingled with that related to the fraud, he makes it impossible for the proceeds of his fraud to be cut off and returned to the victim unless all mail deliveries to that address are stopped. See pages 34–39, *supra.* The person engaging in such an unlawful enterprise should not be able to prevent interruption of the fraudulent scheme because of an inability to segregate two

classes of mail for which he is responsible. The harm to the public, whom Congress had constitutional authority to protect against fraudulent use of the mails, if all commingled mail was required to be delivered thus needs no elaboration. See pp. 35–37.

This, we think, far outweighs the interference with the freedom of expression of those who wish to write to the proscribed address. For even as to those whose letters might deal with other subjects, there is no general impairment of their right to express themselves, to disseminate ideas, to participate in discussion of any subject, but only an inability to communicate, through one medium, albeit an important one, with a single addressee. A similar disability to communicate might result if the addressee were imprisoned, because of his fraud or otherwise, but no one would suggest that such an interference with the rights of those who wished to write him would violate the First Amendment.

Even where free speech is concerned a person cannot take advantage of the intermingling of that which is lawful with that which is not so as to immunize the unlawful from governmental control. *Valentine* v. *Chrestensen*, 316 U. S. 52, discussed *supra*, pp. 44–46. The well-established principle as to the exercise of power in other fields over commingled activities, as well as the common law doctrine of confusion of goods (both of which are discussed, *supra*, pp. 37–39) confirm

our position that the inseparability of mail relating to the fraud and other mail does not defeat the power to safeguard the public against fraud.

D. THE FRAUD ORDER STATUTE IS NOT INVALID AS AUTHORIZING PREVIOUS RESTRAINT ON SPEECH

Mr. Justice Holmes' dissent [33] in *Leach* v. *Carlile*, 258 U. S. at 140–141, suggests that the fraud order statute runs afoul of the general understanding of the First Amendment as "intended to prevent previous restraints." But both the fraudulent representations and communications and the responses to them are, as we have shown, an integral part of the fraudulent scheme and commercial in their nature, so that they are the kind of "speech" to which the First Amendment does not apply. To the slight extent that the fraud order might affect innocent incoming mail, the interest in protecting the true "speech" of the letter-writers is far outweighed by the interest in the protection of the public against mail fraud. Accordingly, we do not believe that the "previous restraint" doctrine is applicable here.

The authorities which support this statement are cases in which the point was never raised, inasmuch as heretofore (apparently outside of the dissent in *Leach* v. *Carlile*) no one had suggested that the First Amendment prohibited the enjoining of fraudulent advertising schemes. The orig-

[33] Mr. Justice Holmes' opinion implies that he was concerned with a previous restraint upon the senders of the letters rather than a previous restraint upon the false representations themselves.

inal Federal Trade Commission Act empowered the Commission and the Circuit Courts of Appeals to issue cease and desist orders against unfair methods of competition in interstate commerce which, as this Court knows, included false advertising. The cease and desist orders were, of course, the equivalent of injunctions when affirmed by the Circuit Courts of Appeals. It has never been suggested that this form of previous restraint upon fraudulent advertising contravened the First Amendment. In 1938 the Federal Trade Commission Act was amended so as to make it unlawful for any person to disseminate false advertisements through interstate commerce or the mails. Section 12, as added, 52 Stat. 114, 15 U. S. C. 52. Section 13 of the amended Act authorized the Commission to apply to a district court for an injunction against continued dissemination of the false advertisement pending the completion of the proceeding before the Commission. This section, which has been upheld and applied in *Federal Trade Commission* v. *Thomsen-King & Co.*, 109 F. 2d 516 (C. C. A. 7), of course, imposes a previous restraint upon false advertising.

The statutes administered by the Securities and Exchange Commission also provide for enforcement by injunction. Securities Act, Section 20, 48 Stat. 86, 15 U. S. C. 77t; Securities Exchange Act, Section 21, 48 Stat. 899, 15 U. S. C. 78u; Public Utility Holding Company Act, Section 18,

49 Stat. 831, 15 U. S. C. 79r (f). These statutes and provisions have frequently been applied so as to enjoin the use of the mails by a person found to have been engaged in unlawful conduct. *E. g., Electric Bond and Share Co.* v. *Securities and Exchange Commission,* 303 U. S. 419; *Securities and Exchange Commission* v. *Joiner Corp.,* 320 U. S. 344; *Securities and Exchange Commission* v. *Howey Co.,* 328 U. S. 293; *Securities and Exchange Commission* v. *Jones,* 15 Supp. 321 (S. D. N. Y.), affirmed, 85 F. 2d 17 (C. C. A. 2), certiorari denied, 299 U. S. 581; *Securities and Exchange Commission* v. *Universal Service Ass'n,* 106 F. 2d 232 (C. C. A. 7), certiorari denied, 308 U. S. 622; *Timetrust* v. *Securities and Exchange Commission,* 142 F. 2d 744 (C. C. A. 9); *Securities and Exchange Commission* v. *Thomasson Panhandle Co.,* 145 F. 2d 408 (C. C. A. 10). The object of the Securities Act, like that of the Federal Trade Commission Act and the mail fraud statutes, was to protect the public against fraud.

The cases sustaining or indicating the validity of licensing requirements for the distribution of commercial advertising, pamphlets or leaflets, as distinct from statements designed to disseminate ideas, also demonstrate that the doctrine of "previous restraints" has no place in this field. For the licensing system was held invalid as applied to religious literature in such cases as *Murdock* v. *Pennsylvania,* 319 U. S. 105, and *Schneider* v.

State, 308 U. S. 147, in part because it constituted a previous restraint upon speech. The basic assumption in those opinions (see pp. 46–50, *supra*) that a licensing system would have been valid in so far as commercial announcements were concerned shows that the latter are not protected by any "previous restraint" doctrine. See, e. g., *Schneider* v. *State, supra,* at 163, 165; *Cantwell* v. *Connecticut,* 310 U. S. 296, 366; *Valentine* v. *Chrestensen,* 316 U. S. 52; *Jamison* v. *Texas,* 318 U. S. 413, 417. See, also, *Baccus* v. *Louisiana,* 232 U. S. 334 (licensing of commercial itinerant hawkers); *Emert* v. *Missouri,* 156 U. S. 296 (same); *Cusack Co.* v. *City of Chicago,* 242 U. S. 526 (prohibition against bill boards); *San Francisco Shopping News Co.* v. *City of South San Francisco,* 69 F. 2d 879 (C. C. A. 9), certiorari denied, 293 U. S. 606 (prohibition against distribution of advertising matter "on any porch or yard not in possession or under control of person".).

This Court has recognized that the doctrine of "previous restraints", which was designed to preserve the freedom of newspapers and others freely to participate in the discussion of public affairs, is not an absolute one. *Near* v. *Minnesota,* 283 U. S. 697, 716. Among the enumerated class of "exceptional cases" the Court in that case included the public interest in decency, observing that "the primary requirements of decency may be enforced against obscene publications." (*Ibid.*) The public concern with decency in publications would

appear to be of no greater magnitude than the interest in protecting the public against fraud. If the First Amendment applies to the type of mail here involved at all (and only if it does could the "previous restraint" doctrine be applicable), we submit that the public interest in safeguarding these written statements is so slight, as contrasted with the interest in preventing fraud, as clearly to justify holding this situation within the exceptions to the "previous restraint" rule.

III

THE FRAUD ORDER STATUTES DO NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

We have shown in Point I, *supra*, p. 27, that the fraud order statutes are a valid exercise of the postal power, that the provisions for returning all money and mail matter are a reasonable means of giving effect to the legitimate congressional objective of protecting the public against use of the mails to defraud. As this Court declared with respect to the commerce power: "Even though Congress, in the choice of means to effect a permissible regulation of commerce [and, we add, of the mails] must conform to due process [citing cases], it is evident that where, as here, the means chosen are appropriate to the permissible end, there is little scope for the operation of the due process clauses." *Virginian Ry. Co.* v. *System Federation,* 300 U. S. 515, 558.

Argument is unnecessary to show that the due process clause does not prohibit legislation directed at preventing fraud or deception. *United States* v. *Carolene Products Co.*, 304 U. S. 144; *Carolene Products Co.* v. *United States*, 323 U. S. 18; *Sage Stores Co.* v. *Kansas*, 323 U. S. 32; *Hebe Co.* v. *Shaw*, 248 U. S. 297, 302–303; *Purity Extract Co.* v. *Lynch*, 226 U. S. 192, 204; *Hall* v. *Geiger-Jones Co.*, 242 U. S. 539, 556–557; Federal Trade Commission Act; Securities Act; Food, Drug and Cosmetics Act. This power unquestionably extends to the prevention of fraud through the mails.

It is, of course, true that the means selected to attain a legitimate objective must be reasonably related to that end in order to comply with due process. But here the return of money and mail to the senders is clearly related to protecting the public against being harmed through the use of the mails to defraud. It both prevents the schemer from securing the fruits of his fraud and guarantees the victims against loss. Indeed, it is probably the only fully effective method of accomplishing the latter important result.

For Congress to require the return of all mail sent to the proscribed address is also reasonably related to the accomplishment of the legislative objective. For, as we have seen, since a postmaster cannot know which mail sent to a particular address is related to the fraudulent scheme, he must return all mail if the mail relating to

the fraud is to be stopped. This Court is respectfully referred to Point I, pp. 32–39, *supra, for a* more elaborate exposition of the reasonableness of these requirements.

IV

THE FRAUD ORDER STATUTES DO NOT VIOLATE OTHER PROVISIONS OF THE CONSTITUTION

Respondents, in their letter to the Clerk of this Court, have indicated their intention to urge that the code provisions also violate the Fourth, Sixth, and Eighth Amendments and Article III, Section 2, Paragraph 3 of the Constitution. These constitutional objections may be disposed of briefly.

A. THE FOURTH AMENDMENT

This Court in one of the earliest decisions as to the breadth of the postal power indicated that the Fourth Amendment precluded a postmaster from opening sealed letters without a warrant. *Ex parte Jackson,* 96 U. S. 727, 735. In accordance with this admonition Congress has explicitly prohibited the Post Office Department from opening the mails—and it is indeed as a result of this restriction that the fraud orders must extend to all mail sent to a particular address and not merely to mail connected with the fraud. But, apart from this, it is difficult to see how the Fourth Amendment is relevant. For the letters which are returned to the senders do not come into the recipients' possession and do not belong to the recipients.

Public Clearing House v. *Coyne*, 194 U. S. 497, 511. They belong to the senders to whom they are returned. There is thus obviously neither a search nor a seizure in the failure to deliver.

B. THE SIXTH AND EIGHTH AMENDMENTS AND ARTICLE III, SECTION 2, PARAGRAPH 3

The Sixth Amendment and Article III, Section 2, Paragraph 3 of the Constitution provide for trial by jury and other guaranties in criminal prosecutions. The Eighth Amendment prohibits excessive fines and cruel and unusual punishments. The argument that the fraud order statutes contravene these constitutional provisions will presumably rest on the claim that the statutes are criminal in nature.

But the purpose of refusal to deliver the mail is to protect the public against fraud in the only way which in practice will be effective. As this Court has stated in *Degge* v. *Hitchcock*, 229 U. S. 162, 171: "the statute was passed primarily for the benefit of the public at large and the order was for them and their protection." And again more recently in *Commissioner* v. *Heininger*, 320 U. S. 467, 474, the Court stated that:

> The single policy of these sections is to protect the public from fraudulent practices committed through the use of the mails. It is not their policy to impose personal punishment on violators; such punishment is provided by separate statute, and can be imposed only in a judicial

proceeding in which the accused has the benefit of constitutional and statutory safeguards appropriate to trial for a crime.

The fact that respondents may suffer financial or other injury by reason of the inability to receive mail does not mean that the proceeding is criminal within the meaning of the constitutional provisions. *Ex parte Quirin,* 317 U. S. 1, 40; *Capital Traction Co.* v. *Hof,* 174 U. S. 1; *Shields* v. *Thomas,* 18 How. 253; *United States* v. *Zucker,* 161 U. S. 475. The same can be said of all the many familiar situations in which unlawful practices may be restrained in advance in order to protect the public, whether by way of abatement of nuisance, through the issuance of injunctions by courts of equity, or through administrative cease and desist orders. In many cases administrative sanctions necessary for the protection of the public have been sustained although very damaging to the respondent. *Steuart & Bro.* v. *Bowles,* 322 U. S. 398 (suspension of retail fuel oil dealer under OPA regulations); *Brown* v. *Wilemon,* 139 F. 2d 730 (C. C. A. 5), certiorari denied, 322 U. S. 748 (suspension of gasoline distributor under OPA regulations); *Nelson* v. *Secretary of Agriculture,* 133 F. 2d 453 (C. C. A. 7) (suspension of trader from contract market under Commodity Exchange Act); *Wright* v. *Securities & Exchange Commission,* 112 F. 2d 89 (C. C. A. 2) (expulsion of members of national securities exchanges under Securities Exchange

Act of 1934); *Farmers' Livestock Commission Co.* v. *United States*, 54 F. 2d 375 (E. D. Ill.) (suspension of market agencies under Packers and Stockyards Act). It is also well established that courts may impose civil as well as criminal sanctions as a means of law enforcement, and that the civil sanctions are not governed by the constitutional provisions applicable to criminal prosecutions. *Helvering* v. *Mitchell*, 303 U. S. 391, which reviews the cases in this field, held that the provision for a 50% additional penalty for wilful income tax violation was a civil rather than a criminal sanction.

CONCLUSION

We respectfully submit that the fraud order, as modified, is within the Postmaster General's statutory authority, and that such statutory authority is not in conflict with any provision of the Constitution. For the reasons urged herein and in the government's preceding brief, the judgment below should be reversed.

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Solicitor General.
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DECEMBER, 1947.

APPENDIX A

R. S. § 3929 (39 U. S. C. 259), as amended by the Act of September 19, 1890, c. 908, § 2, 26 Stat. 465, 466, provides as follows:

> SEC. 3929. The Postmaster-General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme or device for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, instruct postmasters at any postoffice at which registered letters arrive directed to any such person or company, or to the agent or representative of any such person or company, whether such agent or representative is acting as an individual or as a firm, bank, corporation, or association of any kind, to return all such registered letters to the postmaster at the office at which they were originally mailed, with the word "Fraudulent" plainly written or stamped upon the outside thereof; and all such letters so returned to such postmasters shall be by them returned to the writers thereof, under such regulations as the Postmaster-General may prescribe. But nothing contained in this section shall be so construed as to authorize any postmaster or other person to open any letter not addressed to him-

self. The public advertisement by such person or company so conducting such lottery, gift enterprise, scheme, or device, that remittances for the same may be made by registered letters to any other person, firm, bank, corporation, or association named therein shall be held to be prima facie evidence of the existence of said agency by all the parties named therein; but the Postmaster-General shall not be precluded from ascertaining the existence of such agency in any other legal way satisfactory to himself.

R. S. § 3929 was further amended by the Act of March 2, 1895, c. 191, § 4, 28 Stat. 963, 964, to cover not only registered letters but all letters or other matter sent by mail:

> SEC. 4. That the powers conferred upon the Postmaster-General by the statute of eighteen hundred and ninety, chapter nine hundred and eight, section two, are hereby extended and made applicable to all letters or other matter sent by mail.

R. S. § 4041 (39 U. S. C. 732), as amended by the Act of September 19, 1890, c. 908, § 3, 26 Stat. 465, 466, provides as follows:

> SEC. 4041. The Postmaster-General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, forbid the payment by any post-

master to said person or company of any postal money-orders drawn to his or its order, or in his or its favor, or to the agent of any such person or company, whether such agent is acting as an individual or as a firm, bank, corporation, or association of any kind, and may provide by regulation for the return to the remitters of the sums named in such money-orders. But this shall not authorize any person to open any letter not addressed to himself. The public advertisement by such person or company so conducting any such lottery, gift enterprise, scheme, or device, that remittances for the same may be made by means of postal money-orders to any other person, firm, bank, corporation, or association named therein shall be held to be prima facie evidence of the existence of said agency by all the parties named therein; but the Postmaster-General shall not be precluded from ascertaining the existence of such agency in any other legal way.

APPENDIX B

DECEMBER 24, 1947.

Hon. PHILIP B. PERLMAN
Solicitor General,
Department of Justice, Washington, D. C.

Re: *Hannegan* v. *Read Magazine, Inc.*

DEAR MR. PERLMAN: In accordance with your request, I am setting forth herein a brief description of Post Office Department procedure in the issuance, revocation and modification of fraud orders.

In calling upon concerns and individuals to show cause why fraud orders shall not be issued against them, it is now, and has been for many years, the practice to name as respondents in the show cause notice all of the names which the evidence before the Department at the time of the issuance of the notice indicates are then being used to obtain remittances through the mails pursuant to the alleged fraudulent scheme.

Frequently proof adduced at the hearing on behalf of the respondent discloses that certain of the names called upon should not be covered by the fraud order, and in such instances it has been the practice to eliminate such names from the order when issued.

In other instances evidence adduced at the hearing by counsel for the respondent has been directed to a defense of the scheme as a whole, and counsel have neglected to develop evidence which would have shown that certain of the persons or

concerns named as respondents were improperly so named, or that they played such a minor role in the consummation of the scheme that their names could have been eliminated without affecting the effectiveness of the order when issued. After the issuance of the fraud order, if it is shown that certain names should not have been included therein, it has been the practice to revoke so much of the order as covered those names. There have been a great many such cases; a number of our orders of this type have been made available to your office for examination.

After an order has been in effect a sufficient length of time to insure the suppression of the scheme against which it is aimed, it has long been the practice of the Department to revoke it on a showing that the scheme has been suppressed and will not be resumed. Many such orders against personal names of individuals have been revoked. The duration of such orders is essentially dependent upon the willingness of the promoter to give assurance of the abandonment of the fraudulent scheme.

Previous to November 20, 1947, there was no formal procedure whereby a person or concern against whom a fraud order had been issued could petition the Postmaster General to revoke or modify the order. The practice in granting these applications for revocation was therefore informal. On November 20, 1947, the rules and regulations applicable to fraud hearings were amended to provide a formal method of revocation and modification of fraud orders. See 12 F. R. 7944 (Sec. 51.28). After an application has been received by the Post Office Department ask-

ing for a modification or revocation of a fraud order, it has been, and still is, the practice to request the inspection service to conduct an investigation to determine whether the person or concern against whom the fraud order was issued had discontinued the fraudulent enterprise either under the names set forth in the fraud order or under any other names. If the report of the inspector shows that the fraudulent scheme has been discontinued, the order is either revoked or modified in accordance with the prayer contained in the application or petition. On the other hand, if the report of the inspector shows that the person or concern against whom the fraud order was issued is conducting the fraudulent scheme under other names, or intends to conduct the scheme under the names set forth in the fraud order should the order be revoked or modified, the application is denied.

It has long been the policy of the Department to attempt to include in fraud orders only such names as are necessary to effectively suppress the scheme against which the order is issued, and to revoke the order on a showing that the scheme has been suppressed. Most of the fraud orders revoked have been those issued against the personal names of individuals. Trade names employed in the promotion of fraudulent schemes through the mails are almost invariably so closely identified with the scheme suppressed by the fraud order that the name has no independent valve or use, and such orders are not ordinarily revoked unless it is established that they were improperly issued. However, in a few instances, orders against trade names have been revoked

upon a showing that their inclusion was not essential to the suppression of the fraudulent scheme. An instance of this sort is Fraud Order No. 7112, F. & L. Docket 10/131, against the U. S. Spectacle Company and other names employed by Benjamin Ritholz, a repeat offender, who had used some thirty different business names in a mail order spectacle swindle. The order was modified to eliminate therefrom the name "Dr. Ritholz Optical Company."

A large percentage of all fraud order cases are concluded upon the basis of voluntary discontinuance of the scheme described in the charges served upon the promoters. During the fiscal year 1946 the Solicitor of the Post Office Department issued 239 citations to show cause why fraud orders should not be issued against 672 names of persons and concerns. Compromise settlements were effected in 123 of those cases, involving 323 names of persons and concerns. During the same period 100 fraud orders were issued, and no action was taken in eight cases because of insufficient evidence.

The fraud order statutes have never been interpreted by the Department as requiring the issuance of a fraud order against a large and otherwise legitimate concern for the incidental sale of some article through the mails by misleading advertising. While charges have been issued in a few such cases, settlement has invariably been had upon agreement without fraud order. An instance of this sort is a case which arose in October, 1940, F. & L. Docket No. 13/120, in which a large New York department store was served with charges and notice to show cause.

The case was settled without hearing upon assurances that the sale of the misrepresented article would be discontinued. Under present practice formal charges would not have been served upon the store, but its attention would have been called to the objectionable advertising so that it might be discontinued.

Sincerely yours.

JESSE M. DONALDSON,
Postmaster General.

U. S. GOVERNMENT PRINTING OFFICE: 1947

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 1106

ROBERT E. HANNEGAN, Individually and as Postmaster General of the United States,

Petitioner,

v.

READ MAGAZINE, INC., *et al.*

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR RESPONDENTS IN OPPOSITION

CUMMINGS & STANLEY,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 1108

ROBERT E. HANNEGAN, Individually and as Postmaster General of the United States,

Petitioner,

v.

READ MAGAZINE, INC., *et al.*

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR RESPONDENTS IN OPPOSITION

Opinions Below

The opinion of the United States District Court for the District of Columbia (R. 75-83) is reported at 63 F. Supp. 318. The opinion of the Court of Appeals is reported at 158 F. (2) 542.

Jurisdiction

The judgment of the Court of Appeals was entered on December 9, 1946 (R. 120). The jurisdiction of this Court is invoked under the provisions of Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented

Whether, in a suit to enjoin a fraud order issued by the Postmaster General on the ground that respondents were engaged in conducting a scheme or device for obtaining money through the mails by means of false or fraudulent pretenses, representations or promises, the Courts below properly found that there was no substantial evidence before the Postmaster General upon which the fraud order could lawfully be issued.

Statutes Involved

The statutes involved are R. S. § 3929 (39 U. S. C. 259), as amended by the Act of September 19, 1890, c. 908, § 2, 26 Stat. 465, 466, as further amended by the Act of March 2, 1895, c. 191, § 4, 28 Stat. 963, 964, and R. S. § 4041 (39 U. S. C. 732), as amended by the Act of September 19, 1890, c. 908, § 3, 26 Stat. 465, 466. These statutes are set forth in full in the appendix to the petition at pages 20-22.

Statement

On October 1, 1945 the Postmaster General issued a fraud order against respondents purportedly in accordance with Sections 259 and 732, Title 39, U. S. Code. This order was addressed to the Postmaster at New York, New York, the city where respondents' business was located, and forbade him to pay any postal money order drawn to respondents' order, directed him to inform the remitter of any such postal money order that payment thereof had been forbidden, and to return all mail addressed to respondents marked "Fraudulent." The order so issued was made after a hearing before an Assistant Solicitor to the Postmaster-General, at which the following undisputed facts appeared:

Respondent Read Magazine is a New York corporation, a subsidiary of respondent, Publishers Service Company, Inc., and the owner and publisher of "Read" and "Facts" Magazines (R. 64). Respondent Literary Classics, Inc. is a New York corporation, a subsidiary of Publishers Service Company, Inc., engaged in the business of publishing classical literature (R. 65). Publishers Service Company, Inc. is a corporation originally organized under the laws of Delaware in 1928, whose successor of the same name, the respondent, was organized under the laws of New York in 1930 (R. 64-65). The business of the last-mentioned company is the promotion of circulation of newspapers through contests, and through its subsidiaries, the publishing of magazines and classical literature and the manufacture of phonograph records (R. 65). In the newspaper field, respondent Publishers Service Company, Inc. has conducted about 150 contests for the promotion of circulation of leading American newspapers (R. 65). It has also conducted contests for the promotion of subscriptions to magazines and the sale of books published by its subsidiary, Literary Classics, Inc. (R. 65).

In April 1945 respondents offered to the public through "Facts" Magazine and national newspaper advertising a contest which they denominated "Facts Magazine's Puzzle Contest." This contest was conducted for the purpose of promoting the sale of books published by respondent Literary Classics, Inc. (R. 42, 65). Each puzzle in the contest was a rebus which is a puzzle representing a word or words by letters, numerals or pictures, or by a combination of the three. A first prize of $10,000 and 499 other cash prizes were offered to winners of the contest (R. 30-31, 65).

The contest was governed by rules, which were printed in every announcement of the contest and in the booklet containing the puzzles (R. 30-31, 32-33). In the announcements of the contest, seven references to the rules were made, and the contestants were repeatedly urged to read them (R. 30-31).

The rules of the contest provided for the presentation to contestants of a group of 80 rebus puzzles, divided into 20 series of 4 puzzles each. The contestant was required to submit 15 cents with his solutions to each series of 4 puzzles in return for which he received a book, regardless of the correctness of his solutions. Tying contestants were required to solve an additional 80 puzzles and to pay 15 cents with each series of 4 solutions, for which they received another book, regardless of the correctness of their solutions. Those contestants who succeeded in solving the second group of 80 puzzles were required to solve an additional 80 puzzles and to remit 15 cents with each series of 4 solutions, for which another book was given. In addition, the contestants competing in the solution of the last group of 80 puzzles were required to submit a letter on a stated subject which was to be judged by the standard of originality of description and general interest. All these terms of eligibility for prizes were stated in the published rules of the contest (R. 30-31, 32-33).

The sponsors of the contest, realizing that there probably would be ties in the solution of the puzzles in the contest, stated this anticipation in the rules as follows:

> "Upon entering the contest, the entrant is asked to realize that the sponsor anticipates that a large number of persons may enter the contest and that a large number may solve one, two or all three of the Groups of Puzzles * * *" (Rule 9, R. 30-31).

In respect of ties, Rule 9 of the Official Rules of the contest provided as follows:

> "* * * In case of ties, if two or more persons tie in submitting the correct solutions, then the first two or more prizes will be reserved for those contestants and will be awarded in the order of accuracy of the submissions of those contestants to a first, and if necessary, a second, tie-breaking group of puzzles, divided into Series exactly like the first

Group. In case a second tie-breaking Group of puzzles is necessary, contestants eligible to solve same will be required to accompany their solutions to this second tie-breaking Group of puzzles with a letter of not more than 200 words on the subject: 'The Puzzle I Found Most Interesting and Educational in This Contest.' All tie-breaking Series must be qualified in accordance with the provisions of Rule No. 8. Only in case ties exist after such final tie-breaking puzzles have been checked will the letters be considered, and in that event they will be judged on the basis of originality in description and general interest."

Rule 8 of the Rules of the contest provided in part as follows:

> "To qualify for a prize, the contestant is required to accompany each Series of four solutions with 15 cents in coin."

The requirement of remittances of 15 cents with each series of four puzzles was stated in identical language both with respect to the original group of puzzles and to the tie-breaking groups of puzzles (Rules 8, 9, R. 30-31).

Approximately 190,000 contestants entered the contest, and 90,000 submitted their solutions to the first group of puzzles (R. 32, 43). Of these 90,000, about 35,000 submitted correct solutions to the original 80 puzzles (R. 32, 43). Of these 35,000, about 27,000 succeeded in solving the first group of tie-breaking puzzles, and continued in the contest. None of these contestants was called at the hearing to testify that he had been misled by the rules of the contest.

In view of the above-quoted rules of the contest dealing with the remittances which were required for eligibility, the quoted statement of the Solicitor of the Post Office Department misstates the facts. At page 6 of the petition, the Solicitor of the Post Office Department is quoted as follows:

> "The circular containing these 'Tie-Breaker' puzzles now states the fact that should have been clearly set forth by the promoters at the outset, namely, that the entrant is required to pay an additional $3.00 for the privilege of submitting solutions to the 'Tie-Breaking' puzzles in order to remain in the contest."

The further statement that the Literary Classics Book Club was simply a term used by the respondents and that no book club existed in fact is contradicted by the evidence in the case (R. 101).

The disposition of the Post Office Department to ignore the rules of the contest in an effort to support its charge that the contest was not a puzzle contest is pointedly evidenced by the memorandum of the Solicitor embodying his findings of fact, part of which is quoted at page 7 of the petition. In this memorandum the Solicitor states:

> "Throughout the contestant's participation in this so-called 'puzzle contest' up to this stage thereof, the fiction is maintained that the prizes may be won by those who correctly solve all of the simple rebus puzzles sent them by the promoters."

At another point in his memorandum, in contradiction of the quoted statement, the Solicitor said:

> "Reference to any feature other than puzzles to be considered by the participants in this contest is found only by close examination of the Rules, which represent that upon the occurrence of what appears to be a remote contingency the contestant will be called upon to submit a letter upon the subject 'The Puzzle I Found Most Interesting and Educational in This Contest'" (R. 32).

Even the Solicitor admits that by "close examination" of the rules the requirement is found that a letter in addition to correct puzzle solutions be submitted by the contestant as a condition to eligibility for a prize. In view of the re-

quirement that 240 puzzles be correctly solved before the letter submission is to be judged, the respondents were justified in denominating the contest a "Puzzle Contest."

There is no claim by petitioner that the provision for the submission of a letter to accompany the solutions to the third group of 80 puzzles was not contained in the rules, but he argues that because the sponsor had reason to believe that the contest would be determined by the judgment of letter submissions it was improper to call it a puzzle contest. In view of the rules requiring the solution of 240 puzzles prior to the submission of a letter in the competition, it seems that it would have been a misrepresentation to state that prizes would be awarded solely on the basis of the merits of letter submissions alone.

On November 15, 1945, at the suit of respondents, the United States District Court for the District of Columbia granted a permanent injunction against petitioner, restraining him from putting into effect the fraud order which he had issued against them (R. 84-85). The Court found upon examination of the evidence that the complete plan of the contest was revealed and that the objection of the Postmaster General to the denomination of the contest as a "Puzzle Contest" was solely a dispute over nomenclature (R. 75-83). Upon appeal the judgment of the District Court was affirmed. The Court of Appeals noted that:

> "Appellant does not claim that any statement in the advertisements was untrue or that there was any departure from the procedure announced in the Official Rules of the Contest. There is no claim by him that the judging of the letters was to be other than bona fide, or that any contestant failed to receive the promised books. No contestant, so far as the record shows, complained of being misled or defrauded. In other words, the fraud order is not premised upon specific or affirmative misstatements, or upon failure to perform as promised, but is premised upon an impression which appellant says is conveyed by the advertisements as a whole. * * *

> The rule is broad; a false pretense, representation or promise may be made by impression. But such impression must be fairly derived. * * *
>
> To support appellant's conclusion in this case, one must ascribe to the advertisements an impression directly contrary to the stated rules of the contest. One must thus assume that readers were led not to read the Rules, or were led to ignore them or to misunderstand them or to believe something else contrary to their statement. There is no evidence, we think, to support any of those assumptions. The Rules were legibly printed. They were emphasized, rather than minimized, in the text. They were clear to any reasonable mind. No contradictory expressions occurred elsewhere" (R. 113).

Argument

There is not now, nor has there ever been, any dispute between the parties regarding the essential facts in this case. The dispute solely concerns the interpretation of those facts. The petitioner has contended that they evidence fraud because they create a false impression. The respondents contend the contrary. The power of the Postmaster General to issue a fraud order depends for its legal exercise upon the presentation before him of "evidence satisfactory to him" that a person or company is conducting a scheme for obtaining money through the mails by means of false or fraudulent pretenses, representations or promises. "Evidence satisfactory to him" has been interpreted to mean "substantial evidence" (*Leach* v. *Carlile*, 258 U. S. 138, 139-140). The privilege of the use of the mails may not be denied by the Postmaster General for just any reason at all (*Hannegan* v. *Esquire, Inc.*, 327 U. S. 146, 156). It may be denied only upon presentation to the Postmaster General of substantial evidence of fraud. The norm of "substantial evidence" is essential to prevent an arbitrary or capricious exercise of power by the Postmaster General. Uniformity of exercise of the power requires

that there be some standard by which all Postmasters General are guided.

The determination of whether there was substantial evidence before the Postmaster General in the instant case did not involve a substitution of the court's inferences from evidence for those of the Postmaster General. Neither court denied the Postmaster General's power to base inferences upon substantial evidence. Both courts properly denied the Postmaster General's right to infer that the contest was fraudulent because of the absence of any evidence from which an inference of fraud could be drawn. This court has recognized that an order of the Postmaster General may be enjoined if it is not based upon substantial evidence of fraud. In *American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94, this court said at page 106:

> "Other instances might be adduced to illustrate the proposition that these statutes were not intended to cover any case of what the Postmaster General might think to be false opinions, but only cases of actual fraud in fact, in regard to which opinion forms no basis."

See also *Leach* v. *Carlile*, *supra*, pages 139-140.

1. Petitioner contends that the contest should have been denominated a "letter-writing contest" instead of a "puzzle contest," since it was probable that the ultimate prize winners would be determined on the basis of the merits of their letter submissions rather than the correctness of their puzzle solutions (Petition, pp. 13-14). It is at least doubtful that the suggested nomenclature would have satisfied the petitioner's standard of business ethics, in view of the fact that the contestant was required, prior to submitting a letter in the competition, to solve 240 puzzles.

The only question presented by the petition is whether the Courts below exceeded their powers in holding that it

was not fraudulent to represent the instant contest as a "puzzle contest" because the determination of winners was based not only upon the solution of puzzles, but also upon the merit of the letter required by the rules to be submitted with the solutions to the last 80 of the 240 puzzles. No contention is made by petitioner that this condition of eligibility for a prize was not stated in the rules of the contest. It appears to be contended, however, that the contestants would not read the rules or would be misled upon reading them. From the small type in which the rules were printed it is argued that there was an intent to conceal the letter-writing term of eligibility for a prize. All the rules were printed in the same size type as that dealing with the letter-writing term of the rules (R. 30-31, 32-33). The same argument might as logically be used to condemn as instruments of fraud insurance policies, bills of lading, United States Treasury bonds, postal savings certificates and other legal documents.

Predicated upon the large type in the announcement of the contest denominating it a puzzle contest, and the smaller type of the rules setting forth the letter-writing term of eligibility for prizes, Mr. Justice EDGERTON in his dissenting opinion has ascribed an intent to respondents to conceal the letter-writing term of the rules of the contest. He argues that if respondents *intended* to convey to all or any of their readers either (1) the idea that the contest was merely a puzzle contest, or (2) the idea that there was a substantial chance that prizes would be won merely by solving puzzles, respondents made a false pretense, and if the Postmaster General could reasonably find either of those intents, the fraud order must be sustained (R. 116). It is submitted that this is not a correct statement of the law. If it were anyone could be barred from use of the mails, if his advertising gave a Postmaster General the impression that he intended to defraud the public, regardless of the clarity of the advertising. The statute under which the Postmaster General acted does not condemn a

malign intent of itself. In order to come within the ban of the statute, such intent must be put into effect by overt acts of fraud, whether consisting of false representations or concealment of material facts. Substantial evidence of fraud does not consist of an imputation by the Postmaster General of a malign intent based upon his impression of representations which are true and innocent in themselves. There must be an objective standard apart from the subjective view of the Postmaster General. Fraud is composed of the following elements: (1) a false representation, (2) in reference to a material fact, (3) made with knowledge of its falsity, (4) and with intent to deceive, (5) with action taken upon reliance upon the representation. *Pence* v. *U. S.*, 316 U. S. 332, 338. By definition, fraud is objective. If the evil design remains wholly in the mind, it cannot constitute fraud. The evidence warranting the issuance of a fraud order must demonstrate something more than an unconsummated evil intent. Petitioner does not purport to be able to point to any false representations or failure by respondents to state any fact material to the contestant's eligibility for prizes in the competition. He points only to the impressions which he says the evidence creates in him.

Mr. Justice EDGERTON's dissenting opinion, upon which petitioner heavily relies, indicates a neglect by him of the established norm of substantial evidence of fraud as a warrant for the issuance of a fraud order. In his opinion he stated:

> "We asked counsel whether he argued that no reasonable man could conclude that appellees intended to convey the idea that their contest was exclusively a puzzle contest. He replied: 'Of course we must concede that *a* reasonable man might draw that conclusion but we contend that *the* reasonable man would not draw it' " (R. 119).

From this excerpt from the dissenting opinion it appears that Mr. Justice EDGERTON is of the view that any Post-

master General who reasoned that, regardless of the absence of misrepresentations, respondents intended to convey a misimpression, must be sustained in that conclusion. Such dependence upon the personality of a Postmaster General for the administration of law would destroy the essential principle that ours is a government of laws, not of men. Such unconventional grant of power cannot be assumed, since it would raise grave constitutional questions. This Court has refused to permit the intrusion into our law of so alien a policy. In *Hannegan* v. *Esquire, Inc.*, *supra*, at page 158, this Court said:

> "* * * But to withdraw the second-class rate from this publication today because its contents seemed to one official not good for the public would sanction withdrawal of the second-class rate tomorrow from another periodical whose social or economic views seemed harmful to another official."

2. The action of the United States District Court and the Court of Appeals in the instant case did not violate the principle stated by this Court that the inferences from the evidence are to be drawn by the administrative agency and not by the courts. In each of the cases cited by petitioner (Petition, p. 15), this Court, as did the courts below in the instant case, carefully reviewed the evidence before the agency to determine the existence of substantial evidence warranting the inferences which the agency drew. In the cases cited by the petitioner this Court found the existence of substantial evidence from which the agency's inferences could be drawn. In the instant case the courts below found no such evidence.

Petitioner contends that the Court below determined for itself what "a reasonable reader" would believe, and that this may not be the proper substantive approach (Petition, p. 16). The evidence reveals that the announcement and rules of this contest were addressed to the public at large. There is no evidence that they were addressed to

any particular segment of that public. The capacity to understand the announcement and rules therefore is the capacity of the average or reasonable man. In the absence of any evidence that the representations regarding the contest were addressed to others than persons of reasonable intelligence and would consequently be misunderstood, the Postmaster General cannot conclude that they were so addressed. If the rule were otherwise, the Postmaster General could bar from the mails any advertisement that he thought could possibly mislead the most unreasonable member of the public. If the Postmaster General may apply such standard in issuing a fraud order, he possesses the power of life and death over most of America's business enterprises. It cannot be presumed that Congress granted him such unfettered power.

There is no conflict between the instant case and *Federal Trade Commission* v. *Standard Education Society*, 302 U. S. 112, where this Court stated the principle that:

> "The fact that a false statement may not be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced" (p. 116).

There it was represented that an encyclopedia would be given free to the purchasers of the loose-leaf supplements, the purchase price of which was $69.50. In reality, both encyclopedia and supplements regularly sold for $69.50. The statement therefore that the encyclopedia was being given away free was false. No false statement whatsoever was made by respondents in the instant case.

3. The question presented in the instant case is not new. The definition of fraud is known to every Court and should be known by every administrative agency. No Court is unqualified to determine the existence of evidence of fraud. This Court can add nothing to its ancient definition.

Petitioner fears that the instant decision "will permit shrewd and unscrupulous advertisers to take advantage of a large portion of the public by stating facts accurately but in a manner deliberately calculated to give an erroneous impression" (Petition, p. 18). It is difficult to see how the Postmaster General could properly issue a fraud order against an advertiser for "stating facts accurately." If he could, the Postmaster General would be "the unrestricted master of much of the country's business (R. 115).

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

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Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM—1947

No. 50

ROBERT E. HANNEGAN, individually and as Postmaster General of the United States,

Petitioner,

v.

READ MAGAZINE, INC.; *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENTS

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JUDICIAL PRINTING CO., INC., 82 BEEKMAN ST., N. Y.—BEEKMAN 3—9084-5-6 182

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Opinions Below

The opinion of the United States District Court for the District of Columbia (R., 49) is reported at 63 F. Supp. 318. The majority and dissenting opinions in the Court of Appeals (R., 59, 63) are reported in 158 F. (2d) 542.

Jurisdiction

The judgment of the Court of Appeals was entered on December 9, 1946 (R., 68). The petition for a writ of certiorari was filed on March 7, 1947 (R., 142), and was granted

April 28, 1947 (R., 139). The jurisdiction of this Court rests upon Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented

Whether, in a suit to enjoin a fraud order issued by the Postmaster General on the ground that respondents were engaged in conducting a scheme or device for obtaining money through the mails by means of false or fraudulent pretenses, representations or promises, the Court below properly found that there was no substantial evidence before the Postmaster General upon which the fraud order could lawfully be issued.

Statement of the Case

This case is concerned only with the legality of the issuance by petitioner of a fraud order against respondents by reason of their conduct of a contest called the "Hall of Fame Puzzle Contest." It does not concern any charge of fraud in the conduct by some of the respondents of the "All-American Puzzle Contest" or any other contests conducted by them. Although these contests were investigated by postal inspectors, no charges were brought against such contests, nor were any criticisms voiced to their sponsor (R., 71, 81). Respondents are not therefore called upon to defend the honesty of the "All-American Puzzle Contest." No effort was made at the hearing upon the legality of the instant contest to prove that the "All-American Puzzle Contest" was fraudulent. On the contrary the Assistant Solicitor prosecuting the case stated:

> "Mr. Mindel: We are not proposing to prove that the representations made in the previous contest (All-American) are false * * *" (Tr., 23).*

* "Tr." refers to the unprinted transcript of the proceedings before the Assistant Solicitor of the Post Office Department which is a part of the record on file with the Court.

The only relevancy that the "All-American" contest has in the instant case is to show that that contest required for determination of the winners two-tie-breaking groups of puzzles and the submission of a letter on a subject stated in the rules.

That contest was similar in pattern to the one involved in this case. Cash prizes were offered to those who became eligible therefor in accordance with the rules. It provided in its rules for the presentation to contestants of a group of 120 rebus puzzles, divided into 20 series of 6 each and for the remittance by the contestant of 15 cents with each series of 6 puzzles in return for which he received a book regardless of the correctness of his solutions. The rules required tying contestants to solve an additional group of 120 puzzles, and to make the same remittances with each series of 6 solutions, for which they received another book. Those contestants who succeeded in solving the second group of 120 puzzles were required to solve an additional group of 120 puzzles, with like remittances with each series of 6 solutions, and to submit a letter on a given subject which was to be judged if ties remained in the solution of the groups of puzzles. All these terms of eligibility for prizes were stated in the published rules of the contest (R., opp. 86). The winners of this contest correctly solved all three groups of puzzles, and prizes were awarded on the basis of the merits of their letter submissions (R., opp. 96).

In April 1945 respondents announced to the public the "Hall of Fame Puzzle Contest" in which cash prizes were offered to those who became eligible therefor in accordance with the rules. The contest was offered "as a means of popularizing the Literary Classics Book Club" (R., opp. 36). The terms of the offer were contained in printed rules. The rules provided for the presentation to contestants of a group of 80 rebus puzzles divided into 20 series of 4 puzzles each. The contestants were required to submit 15 cents with each series of 4 solutions to the puzzles, in return for

which they received a special edition of the classic "The Way of All Flesh," regardless of the correctness of their solutions. Tying contestants were required to solve an additional group of 80 puzzles, and to pay 15 cents with each series of 4 solutions, for which they received another comparable book, regardless of the correctness of their solutions. Those contestants who succeeded in solving the second group of 80 puzzles were required to solve an additional group of 80 puzzles, to remit 15 cents with each series of 4 puzzles, and to submit a letter of 200 words on a given subject, for which a third book was promised. The letter was to be judged if ties remained after all puzzle solutions had been checked. All these terms of eligibility for prizes were stated in the published rules of the contest (R., opp. 36). The contest was interrupted by the Post Office Department at the conclusion of the first tie-breaker.

In respect of ties, Rule 9 of the Official Rules of the contest provided in part as follows:

> "* * * In case of ties, if two or more persons tie in submitting the correct solutions, then the first two or more prizes will be reserved for those contestants and will be awarded in the order of accuracy of the submissions of those contestants to a *first*, and if necessary, *a second, tie-breaking group of puzzles*, divided into Series exactly like the first Group. In case a second tie-breaking Group of puzzles is necessary, contestants eligible to solve same *will be required to accompany their solutions to this second tie-breaking Group of puzzles with a letter* of not more than 200 words on the subject: 'The Puzzle I Found Most Interesting and Educational in This Contest.' *All tie-breaking Series* must be *qualified in accordance with the provisions of Rule No. 8.* Only in case ties exist after such final tie-breaking puzzles have been checked will the letters be considered, and in that event they will be judged on the basis of originality in description and general interest" (R., opp. 36). (Italics supplied.)

Rule 8 of the Rules of the contest provided in part as follows:

> "To qualify for a prize, the contestant is required to accompany each Series of four solutions with 15 cents in coin. Each contestant who submits a complete Group of solutions for this contest qualified in accordance with the Rules will receive the book selected for the month of July by the Literary Classics Book Club. Any contestant who becomes eligible to submit, and who does submit a Group of qualified tie-breaking solutions, will receive the following month's Book Club selection. * * *"

The requirement of qualifying solutions to puzzles by the remittance of 15 cents with each series of four puzzles was stated in identical language in the rules both with respect to the original group of puzzles and to the tie-breaking groups of puzzles (Rules 8, 9, R., opp. 36).

The rules of the two contests differed in one important respect. The rules of the "All-American" contest made no mention of the probability or lack of probability of ties and the consequent operation of the rules for breaking them, including the submission of a letter. Although the contests since 1941 have required judgment of letter submissions for determination of winners of prizes, many similar rebus contests conducted by respondents did *not* require resort to the letter submissions for determination of winners. The evidence showed that prior to 1941, a number of similar rebus contests were determined without resort to the judgment of letter submissions (R., 85, 86).

The rules of the instant contest specifically dealt with the probability of ties and the consequent necessity of letters and stated the respondents anticipation thereof in the following language:

> "Upon entering the contest, *the entrant is asked to realize* that the sponsor *anticipates* that a *large*

> *number* of persons may enter the contest and that *a large number* may solve *one, two* or *all three* of the Groups of Puzzles * * *" (Rule 9, R., opp. 36). (Italics supplied.)

In each announcement of the "Hall of Fame Contest", the rules were either printed with the announcement or instructions were given regarding how they might be obtained (R., opp. 36; Ex. 1-B, R., opp. 87). In the announcements in which the rules were printed, seven references to the rules, emphasizing their importance, were made as follows:

1. "The rules are printed in full below. Please read them carefully and be sure you understand them."
2. "Write your solutions on the entry forms at the bottom of this page, and mail by Saturday night, April 7th. Then continue in the contest according to the Rules."
3. "To qualify you solutions for a prize, as provided under the Rules, enclose 15¢ with each Series of 4 puzzle solutions."
4. "In return for the remittance for the 20 Series, you will receive the book issued by the Literary Classics Book Club as per the Rules."
5. "In enclosing 15¢ as called for under the Rules, * * *"
6. "I enclose 15¢ in order to qualify me for a prize in accordance with the official rules."
7. "OFFICIAL RULES OF THE CONTEST" (R., opp. 36).

In the announcements in which the rules were not printed, the following instruction was given:

> "Tear out, fill in and mail the coupon at the right. It will bring you the puzzles, rules and details. Then, after studying the puzzles and rules, you can decide whether or not you wish to enter.

"An equally good idea is to buy the April issue of FACTS MAGAZINE on your newsstand. In this issue you will find the first 4 puzzles, all rules, etc. * * *" (Ex. 1-B, R., opp. 87).

The rules were also printed in full in the Puzzle Booklet which was sent to contestants who applied for it (R., opp. 36).

A total of 189,650 persons entered the contest. Of this number 100,315 lost out by failing to submit solutions to all of the group of 80 puzzles. Of the 89,335 persons remaining in the contest approximately 55,501 submitted incorrect solutions to the puzzles. From the field of 189,650 entrants approximately 35,834 persons submitted correct solutions to the puzzles and thereby became eligible to compete in the first tie-breaker. About 1400 of the original entrants in the contest were delinquent in sending in their solutions to the contest and were eliminated. Refunds of all remittances were made to such persons. 153,816 persons or about 81% of the people who entered the contest were eliminated by failure either to submit solutions or solve correctly all the puzzles in the original group (R., 3-4). The contest reached the stage where the solutions to the first tie-breaker had been received when it was interrupted by the action of petitioner (R., 4). All books promised by the rules had been delivered (R., 4).

At the hearing of the charges before the Assistant Solicitor to the Postmaster General, Inspector Boyle, who had investigated the instant contest and two prior ones, gave evidence that no promises that had been made by respondents to the contestants had not been fulfilled. The following question was put to Inspector Boyle, and he gave the following answer:

"Q. Do you know of any promise made by the sponsor to the contestants which had not been fulfilled? A. No" (R., 85).

Inspector Boyle did, however, testify that he had been in communication with participants in the contest and he presented letters to and from some of them (R., 84). Yet no contestant was called at the hearing to testify that he misunderstood any of the terms and conditions of eligibility for winning a prize in the contest. There was no evidence before the Assistant Solicitor of any misunderstanding of the rules by anyone. The petitioner's conclusion that the contest was fraudulent is therefore predicated wholly upon his "factual inferences" arrived at without the aid of evidence from those who had a vital interest in the contest—the contestants. The best evidence of the impressions made upon readers of the advertisements of the contest would, of course, be the testimony of the readers. Of these, 35,834 participated in the first tie-breaker and paid the specified fees without complaint as far as appears from the record. The fact of the continuance of these contestants in the contest is at least some evidence that they were not misled by the tie-breaking provisions of the rules or the requirements of remittances with the tie-breaking groups of puzzles. There is evidence in the record of a satisfactory understanding of the rules by a contestant in a letter addressed by her to Postal Inspectors, offered in evidence by petitioner (Ex. 10, R., 112).

In accordance with the right reserved by respondents in the rules of the "Hall of Fame" contest, they offered the participants in the first tie-breaker increased prizes on condition that they increased their subscriptions to the Literary Classics Book Club. Respondents were careful at the same time to inform the contestants that the fact that they were eligible to compete in the first tie-breaker "does not mean that you have already won a prize or that you are certain to win First Prize, Second Prize or any other prize in this contest" (Ex. 10-C, R., 114). Similarly in importuning the contestants to become eligible for increased prizes by increasing their subscriptions to the Book Club, respondents informed the contestants that their

original eligibility for prizes would be unaffected regardless of whether or not they accepted the offer to increase the amount of the prizes offered. This understanding was made clear in the following language:

> "Please understand that your eligibility to compete for the original prizes remains, regardless of whether you do or do not qualify for eligibility to compete for the higher prizes. In other words, this is a privilege and not an obligation in any sense of the word" (Ex. 10-D, R., 115-116).

The letter transmitting the eligibility form for doubling a contestant's prize, if any, contained the following language:

> "At this point I would like to point out that your eligibility to compete for all of the original prizes offered remains the same, regardless of whether or not you send in the continuation of your own membership or send in any gift memberships. In other words, please understand that there is no obligation whatever" (Ex. 10-E, R., 116, 117).

On August 15, 1945 respondents addressed a letter to all contestants in the main contest who had succeeded in solving the 80 puzzles in the tie-breaking group, offering to pay four times the amount of the original prizes provided the contestants purchased additional Book Club memberships. The letter transmitting this offer made it clear that the contestant's eligibility to win the original prizes offered would be in no way affected by his action upon the increased prize offer. The letter of notification of the increased prize offer read in part as follows:

> "Therefore, please let me again make clear, just as I did when sending you the first group of tie-breaking puzzles, that this letter is not to be interpreted by you as meaning that you have already won first prize or any prize at all. Please understand that your status is strictly this: It is possible that you may win first prize or one of the other prizes,

but this possibility must be based upon your submissions to the final tie-breaking requirements of the contest. Also, realize at the same time that the final tie-breaking puzzles will be by far the most difficult puzzles presented in the contest, and that you are competing with a large number of very able competitors. * * * Facts Magazine does not want any contestant to be under the impression that he or she is certain to win any prize or that a very small number of people are tied.

* * * * * * *

Your present eligibility to compete for the prizes as previously offered will be in no way affected by whether or not you elect to become eligible to compete for the increased prizes up to $40,000 referred to in this letter" (Ex. 10-G, R., 119, 120).

Again on August 17, 1945 respondents transmitted to the contestants an appendage form for specifying their election to qualify for an increased prize, or to indicate rejection of the offer. A postage free envelope was enclosed for response. This letter read in part as follows:

"We also wish to make clear that you are not under any obligation whatever to lengthen your membership. You are now eligible to compete for any of the 500 prizes of which first prize is $15,000. Whether you do or do not increase this eligibility to $20,000, $25,000, $30,000, $35,000, or $40,000 will in no way have any effect on whether or not you win first prize or any other prize" (Ex. 10-I, R., 122, 123).

In all instances of increased prize offers, respondents agreed, whether or not any contestant elected to take advantage of the opportunity, to add the difference between the original prizes and the increased prizes to the original list of prizes. Thus respondents could realize no financial advantage from the failure of any contestant who might win a prize to take advantage of the offer to win an increased prize (Ex. 10-I, R., 122, 124).

In view of the foregoing, the statement in petitioner's brief (p. 17) that contestants were led to believe that they had to buy books to remain eligible for the contest, is without substance.

Summary of Argument

The only issue in this case is whether or not respondents, in the rules of their contest, reasonably stated the terms and conditions under which prizes would be paid.

The charge of fraud for non-disclosure of a material fact cannot be sustained if a statement reasonably adequate to reveal the fact is made. In the instant case, the material fact is the probability of ties and the consequent operation of the rules for breaking them. The language of the rules, published with the announcement of the contest, and duplicated in the Puzzle Booklet, adequately informed the reader (1) that the sponsors anticipated a large number of ties, and (2) the manner of breaking ties.

At the outset, respondents could not be *certain* that a large number of persons would enter the contest nor could they be *certain* that there would be ties. They anticipated that a large number of persons would enter the contest, otherwise they would not have been justified in taking the business risk of advertising the contest and undertaking to pay the prizes. They could not be *certain* that the entrants in the contest would persevere throughout its operation. From their experience in prior contests, they expected a large number of entrants and a large number of ties. They stated this expectancy in the rules of the contest in the following language:

> "Upon entering the contest, the entrant is asked to realize that the sponsor anticipates that a large number of persons may enter the contest and that a large number may solve one, two or all three Groups of the puzzles * * *" (R., opp. 36).

Petitioner is inept in the use of words when he states that respondents had *knowledge* that ties would result. They had knowledge of ties in the past. That knowledge led them to anticipate ties in the future. They stated this anticipation. The language used by respondents aptly expressed their expectation and adequately informed the reader of the probabilities of ties.

In the face of the truthful disclosure by respondents of their expectation of ties in language adequate for that purpose, the Postmaster-General could not properly impute fraud to respondents because the language used did not meet his standard of suitability.

Argument

The power of the Postmaster General to issue a fraud order depends for its legal exercise upon the presentation before him of "evidence satisfactory to him" that a person or company is conducting a scheme for obtaining money through the mails by means of false or fraudulent pretenses, representations or promises. "Evidence satisfactory to him" means "substantial evidence." *Leach* v. *Carlile*, 258 U. S. 138, 139-140. The privilege of the use of the mails may not be denied for just any reason at all. *Hannegan* v. *Esquire, Inc.*, 327 U. S. 146, 156.

I. Replying to Point A of Petitioner's Brief

1. The legal principles sought to be applied by the Postmaster General have no application in the instant case.

1. A charge of fraud for suppression of a material fact cannot be sustained if a statement reasonably adequate to reveal the fact is made. If the ordinary import and common acceptation of terms used adequately reveals the mate-

rial facts, there is no suppression amounting to fraud. The rule was so stated in *Kimber* v. *Young*, 157 Fed. 199, (C. C. A. 8), where the court said at page 202:

> "No one can be heard to say that, because of his or her inaptness in comprehending on examination the ordinary import and common acceptation of the terms employed in a written proposal, they must be made to mean more or other than what they express."

Assuming such adequate revelation of the material facts, it is immaterial whether the meaning is brought home to the reader. This rule is stated in the Restatement of Torts adopted by the American Law Institute, in Section 551, d, as follows:

> "Under the rule stated in this Subsection the person under a duty of disclosure is not subject to liability merely because he has failed to bring the required information home to the person entitled to it. His duty is to exercise reasonable care to do so. If such care is exercised the fact that the information does not reach the person entitled to it does not subject him to liability * * *."

The principle contended for by petitioner that "even if an advertisement is so worded as not to make an express misrepresentation, nevertheless, if it is artfully designed to mislead those responding to it, the mail fraud statutes are applicable", exemplified in *Farley* v. *Simmons*, 99 F. (2) 343, cert. den. 305 U. S. 651, has no application to the instant case. There the advertiser inserted an advertisement in a substantial number of so-called "pulp" magazines of low literary merit, describing photographs, cartoon booklets and booklets entitled "Art of Love" and "Secrets of Love-making." The clear suggestion from the advertising was that the material offered was salacious. As a matter of fact, it was innocent. The Court held that the advertiser was carrying on a scheme calculated fraudulently to prey upon the curiosity of the salacious-minded.

The case is a clear example of the proper application of the rule that a fraud may be perpetrated by suggestion as well as by affirmative misrepresentations.

In order to apply the principle of the *Simmons* case to the instant case, it is the burden of petitioner to show that respondents at least suggested that ties in the contest were improbable and that the tie-breaking provisions of the rules, including the submission of a letter, would therefore not become operative. In view of the evidence that respondents informed contestants that they anticipated a large number of entrants and a large number of ties, and clearly stated the method by which ties would be broken, it is impossible to sustain the proposition that they suggested anything other than their actual expectations.

Nothing in *Stewart* v. *Wyoming Ranche Co.*, *Tyler* v. *Savage* or *Equitable Life Insurance Co.* v. *Halsey, Stuart & Co.*, cited by petitioner, supports the position that he has taken in this instant case. In the first case a seller dissuaded a buyer from counting a herd or inquiring the number thereof from foremen and persuaded the buyer to rely upon his false representation of the number in the herd. In the second case the seller of stock misrepresented the financial condition of the company and its dividend policy. In the third cited case the seller of a city's improvement bonds misrepresented the river frontage of the city, the presence of large industrial plants within the assessment area and the financial condition of the company guaranteeing the bonds.

These cases all involved affirmative misrepresentations whereas in the instant case petitioner disclaims the presence of any affirmative false representation or breaches of promise. He relies instead for his finding of fraud upon the impression which he says the truthful statements of respondents made upon him (Pet. brief, p. 21).

2. Scope of review of administrative determinations.

The findings of an administrative officer vested with authority to conduct an administrative proceeding will not be disturbed by the courts where the decision is fairly arrived at upon substantial evidence, and is not clearly wrong. The courts do not, however, recognize the Postmaster General as being possessed of unbounded power. His power is limited by reason. In *Peoples United States Bank* v. *Gilson*, 161 F. 286 (C. C. A. 8), the Court said in this respect at page 290:

> "But his authority, like that of every other executive officer upon whom quasi-judicial power is conferred by acts of Congress, is neither unbounded, arbitrary, nor discretionary. It is limited, and its exercise is governed by the acts of Congress which confer it and by the laws of the land, and his violation or disregard of either is remedial in the courts. If he is induced to issue a fraud order in a case beyond his jurisdiction, or by reason of an error of law in a case within his jurisdiction, and its issue in the absence of any evidence before him to sustain it, or upon facts found, conceded, or established without dispute which do not sustain it, it is an error of law * * *."

See also:

Hannegan v. *Esquire, Inc., supra.*

Petitioner states in his brief (p. 26) that "the inferences from the evidence are to be drawn by the (administrative agency) and not by the courts." This is a valid statement of the law. It does not mean, however, that all inferences which are made by administrative agencies are drawn from the evidence. A striking example of an inference not drawn from the evidence is *Jarvis* v. *Shackelton Inhaler Co.*, 136 F. (2d) 116 (C. C. A. 6), where the Postmaster General issued a fraud order against the manufacturer of an inhaler.

The Postmaster General adopted a strained interpretation of the advertising and found that the character of the article was misrepresented. He seized upon the statement in the advertising that the "inhaler works perfectly." From that statement he inferred that it was represented that the inhaler would cure colds, hay fever and other respiratory ailments. He also inferred from the advertising that the vapor inhaled from the compound used in the inhaler was represented to be a substitute for a "change of climate." The Court affirmed the decree enjoining the execution of the fraud order on the ground that the inference made by the Postmaster General could not reasonably be drawn from the evidence.

II. Replying to Point B in Petitioner's Brief

Point B of petitioner's brief is as follows: "The Basic Issue: Concealment of the Certainty of Ties." Like the inferences drawn by the Postmaster General, the argument in his brief is overdrawn by the introduction and misplacement of emphasis upon certain language in the rules. Petitioner makes the following statement in his brief (p. 28):

> "The contestants, on the other hand, though informed (if they read the rules carefully enough) that there was a *chance* that the contest would run through two tie-breaking sets of puzzles and a judging of the letters, were led to believe that this was only a *possibility*, not a substantial certainty, and that the contest also *might be completed* on the basis of the first or second group of puzzles without the necessity for a third." (Italics supplied.)

Petitioner fails to point to any evidence in the record of such a representation or suggestion but relies for this statement upon his "impressions." The representation of respondents, on the contrary stressed their anticipation of a large number of ties in the first, second and third groups of puzzles, with consequent operation of all the rules re-

specting the breaking of ties, including the submission of a letter. In view of the statement of this anticipation, there was little, if any, room for the impression that the contest would not run through all its prescribed stages, nor is there any foundation in the record for the Postmaster General's finding that respondents "were misrepresenting the contest as one in which prizes would be awarded 'for the correct solution of puzzles'" (R., 35, 43). The rules contained a statement of the terms of the contract entered into between respondents and the contestants. One of the terms of that contract was that ties would be broken by the submission by the contestants of solutions to the groups of tie-breaking puzzles *and* the submission of a letter on the given subject. These are the terms and conditions upon which respondents offered to pay prizes. It is idle to assert that the offer meant anything more or less than what the plain words expressed.

The Postmaster General states that the effect of the language used in the rules was to create a false impression in the minds of the readers. He has contented himself with the assertion of his own impression without calling a single contestant to state his understanding of the rules in spite of the fact that through his postoffice inspector he was in communication with participants in the contest (R., 84). Such evidence would have been admissible. *Stanley Laboratories* v. *Federal Trade Commission*, 138 F. (2d) 388, 391 (C. C. A. 9); *McAndrews* v. *Belknap*, 141 F. (2d) 111, 114; *Opp Cotton Mills* v. *Administrator*, 312 U. S. 126, 154-155. His failure to call such a witness gives rise to the inference that such evidence would not have supported his charges. *Clifton* v. *United States*, 4 How. 242, 247.

III. Replying to Points C and D in Petitioner's Brief

Point C of petitioner's brief is as follows: "Evidence as to Respondents' Knowledge that the Contest Would Culminate in the Judging of Letters." Point D of peti-

tioner's brief is as follows: "Evidence as to Respondents' Concealing from Contestants the Knowledge that the Contest Would Culminate in the Judging of Letters." Petitioner argues that because three preceding rebus puzzle contests conducted by some of respondents culminated in a judgment of the letter submissions required by the rules, respondents knew that the instant contest would so culminate. Respondents' answer to this contention is that they could not *know* in advance of the occurrence whether anyone would enter the contest or whether there would be ties in the solution of the puzzles and consequent necessity for the submission of a letter. Prior to the instant contest, some of the respondents had conducted many other rebus contests in which the prizes were awarded upon the basis of the solution of puzzles only, without resort to the judgment of letter submissions (R., 85, 86). At the outset of the contest respondents were in a position only to state their anticipation in this respect. This they did.

The difference between respondents and petitioner reduces itself to a question of suitability of language. Petitioner charges that it was fraudulent to represent that respondents "anticipated" the occurrence of ties and the consequent operation of the rules for breaking them, since he contends that respondents knew there would be ties. Respondents submit that they have used the apt words to express the probable eventuality of ties and the operation of the tie-breaking provisions of the rules.

In the dissenting opinion of Mr. Justice EDGERTON, to which petitioner subscribes, he laid stress upon what he deemed the inadequacy of the statement of the material facts, that is, the probability of ties and the operation of the rules for breaking them. He observed that the tie-breaking provision and the statement of sponsor's anticipation that there would be ties was set in "fine print, near the bottom of the page, in a paragraph introduced by matter unrelated and unimportant * * *," not "in type that

is large or heavy or prominently placed." He concludes that "Nothing could be better calculated to suggest to a prospective contestant (a) that the remainder of the paragraph, like its opening sentences, is unimportant and need not be read, and (b) that the remainder of the paragraph, like its opening sentences, deals only with 'answers' and 'solutions.'". It would have been easy for respondents, according to the Justice, "to print this language in large type, or in heavy type, or to begin a paragraph with it, or to devote an entire paragraph to it, or to do several of those things." In this part of his dissenting opinion, Mr. Justice EDGERTON assumes that entrants in the contest would not read this part of the rules and would therefore not learn the terms of the offer of prizes. The Justice completely overlooks the admonition in the announcement of the contest to "read the rules carefully and be sure you understand them" (R., opp. 36).

The criticisms made by Mr. Justice EDGERTON might with equal force be made against bonds, bills of lading, insurance policies and countless other documents with which the public is familiar. Carrying the principle contended for by Mr. Justice EDGERTON to its logical conclusion, the issuers of all such documents could be barred from the mails for "hiding" material terms of the contract in small print. It is difficult to conceive how matter that is legibly printed and published with an admonition to read the matter carefully can be said to be hidden or suppressed so as to give rise to liability for fraud. Such a rule would be impossible to apply, since courts and juries might well differ in their views of the degree of emphasis with which material facts should be stated.

Mr. Justice EDGERTON's dissenting opinion further indicates a neglect by him of the established norm of substantial evidence of fraud as a warrant for the issuance of a fraud order. In his opinion he stated:

> "We asked counsel whether he argued that no reasonable man could conclude that appellees intended to convey the idea that their contest was exclusively a puzzle contest. He replied: 'Of course we must concede that *a* reasonable man might draw that conclusion but we contend that *the* reasonable man would not draw it.' "

From this excerpt from the dissenting opinion it appears that Mr. Justice EDGERTON is of the view that any postmaster general who deduced that advertising material would create a false impression must be sustained in that conclusion. Such dependence upon the personality of the Postmaster General for the administration of law would destroy the essential principle that ours is a government of laws, not of men. Such unconventional grant of power cannot be assumed, since it would raise grave constitutional questions. This Court has refused to permit the intrusion into our law of so alien a policy. In *Hannegan* v. *Esquire, Inc., supra,* this Court said at page 158:

> "* * * But to withdraw the second-class rate from this publication today because its contents seemed to one official not good for the public would sanction withdrawal of the second-class rate tomorrow from another periodical whose social or economic views seemed harmful to another official."

In order to warrant the issuance of a fraud order, the evidence before the Postmaster General must be substantial. It is not enough that it creates a false impression upon the mind of *a* postmaster general. It must be of such a character as to create a false impression upon a *reasonable* postmaster general.

Mr. Justice EDGERTON, in misapplying the doctrine of *Federal Trade Commission* v. *Standard Education Society,* 302 U. S. 112, assumes that the instant contest was not primarily directed to reasonable men, but to children and "other simple people." There is no evidence in the record that the contest was directed to other than the general

public, whose average understanding is that of the "reasonable man." The rule of the *Standard Education Society* case has no application to the instant facts. That was a case of affirmative misrepresentation that an encyclopedia would be given free to the purchasers of a looseleaf supplement, the purchase price of which was $69.50. In reality, both the encyclopedia and supplement regularly sold for $69.50. The statement therefore that the encyclopedia was being given away free was false. Petitioner at no time has contended that any affirmative false statement was made by respondents.

Petitioner criticizes the use of the conditional expression "in case of ties" and contends that such usage was designed to suggest that ties were not likely to occur. As seen above, respondents set forth in full the manner of breaking ties and stated that they anticipated that they would occur. Respondents submit that the language used was apt for the purpose. No alternative language to deal with the eventuality of ties is suggested by petitioner. It is a contortion of language to construe it as a suggestion that ties were merely a "remote contingency" (R., 38-39).

Petitioner further contends that the language in respondents' communication with contestants to the effect that "if you are the only person in the contest who correctly solves all 80 of the puzzles * * * you will automatically be entitled to first prize" is misleading. He fails, however, to give the obvious meaning to the succeeding sentence in this communication, which reads as follows:

> "However, if other persons also correctly solve 80 puzzles and thereby become tied with you, then the procedure as to the breaking of ties and the determination of winners follow the provisions as set forth in Rule No. 9 of the Official Rules to which you are referred now" (R., 103).

Just as in the announcement of the contest, so in this communication to contestants respondents stressed the rules as

containing the terms and conditions of the offer to pay prizes.

IV. Replying to Point E in Petitioner's Brief

The subject of Point E in petitioner's brief is "The necessity of paying additional fees for tie-breaker puzzles". In this point, petitioner restates his argument heretofore made, that since contestants were led to believe that the contest might conclude with submissions of solutions to the original group of 80 puzzles, they were misled into paying additional fees for participation in the tie-breakers. The answer to this argument is the same as that given to the principal contention of petitioner that respondents deceived contestants regarding the probability of ties and the consequent operation of the tie-breaking provisions of the rules.

The charge of fraud based upon alleged misrepresentation of the cost of participation in the contest is unsupportable in the face of the language of the rules. Rule 3, published with the announcement and reprinted in the Puzzle Booklets, provides as follows:

> "A first prize of $10,000 in cash and 499 other prizes totalling $17,500 will be paid to the 500 entrants who by their submissions achieve the highest score in accordance with all of these official rules."

Rule 4 provides in part as follows:

> "The 80 puzzles are divided into 20 series of 4 puzzles each. All Series must be qualified in accordance with Rule No. 8."

Rule 8 provides in part as follows:

> "To qualify for a prize the contestant is required to accompany each Series of 4 solutions with 15¢ in coin * * *".

Rule 9, after describing the mechanics for breaking ties by competition in a first and a second tie-breaking group of puzzles "divided into Series exactly like the first group" states as follows:

> "All tie-breaking Series *must be qualified in accordance with the provisions of Rule 8.*" (Italics supplied.)

Thus, the identical language of Rule 4 respecting the requirement that the contestant qualify his submission for a prize by remitting 15 cents with each Series of four solutions is carried over into Rule 9 (R., opp. 36).

The word "qualify" as used in Rules 4 and 9 is defined in the first sentence of Rule 8, which is quoted immediately above. It is not contended by petitioner that each series of four solutions to the *original* group of 80 puzzles need not be qualified by the remittance of 15¢ with each series (Pet. brief, p. 9). The requirement of qualification, however, is stated in identical language, both with respect to the original group of puzzles and to the tie-breaking groups of puzzles. If it be assumed, therefore, as the appellant does assume, that the rules with sufficient clarity require that the series in the first group be qualified by the remittance of 15 cents in coin with each series, it is impossible to conclude that there was any different representation with respect to the remittance of 15 cents with each series in the tie-breaking groups of puzzles.

It is noteworthy that 35,834 persons continued in the contest and made the remittances prescribed by the rules with the solutions to the 80 puzzles in the first tie-breaker. Of these 35,834, 27,000 succeeded in solving the first group of tie-breaking puzzles, and, as appellant asserts in his brief, presumably continued in the contest and paid the additional sum of $3.00. The fact of the continuance of these contestants in the contest is strong evidence that they were not misled by the rules of the contest requiring them to

make the prescribed remittances with the tie-breaking groups of puzzles.

Although appellant argues that contestants would be misled by the announcement of the rules of the contest respecting the cost of participation, it is significant that not a single contestant was called at the hearing so to testify although Post-Office Inspector Boyle testified that he was in communication with a number of them. Furthermore, Inspector Boyle himself gave evidence that no promises had been made by the sponsor to the contestant which had not been fulfilled (R., 85). Had the sponsor made false promises respecting the tie-breakers, Inspector Boyle could not have testified that the sponsor had fulfilled its promises.

The inconsistency between the memorandum of the Solicitor for the Post Office Department and the present contention of the petitioner regarding the inferences to be gleaned from the rules of the contest is pointedly exemplified in the memorandum, wherein the Solicitor states:

> "It is therefore apparent from the evidence in this case, and I so find, that respondents knowingly and falsely represented to persons solicited to participate in the 'Hall of Fame Puzzle Contest' that they could and would win the prizes offered by submitting the most correct solutions to the 'all 80 puzzles' and *later to the tie-breaking puzzles* * * *" (R., 38, italics supplied).

This statement of what the contest consisted of is at complete variance with petitioner's present contention that it was suggested that prizes "might" be won by the solution of the first group of 80 puzzles. No reason is given in the Solicitor's memorandum for his disregard of the other stated term upon which prizes were offered, that is, the submission of a letter with the solutions to the final tie-breaking group of puzzles. The disposition of the Post Office Department to ignore the rules is thus pointedly evidenced.

Petitioner urges that "even if it be thought" that his conclusions are "debatable," they were not unreasonable. Respondents submit that the conclusions are impossible to defend if effect is given to the rules and they are read without contortion.

Substantial evidence of fraud does not consist of an imputation by the Postmaster General of a malign design based upon his impression of representations which are true and innocent in themselves. There must be an objective standard for determining the presence of fraud apart from the subjective view of the Postmaster General. If the rule were otherwise, the Postmaster General could bar from the mails any advertisement that he thought could possibly mislead the most unreasonable member of the public. If the Postmaster General may apply such standard in issuing a fraud order, he possesses the power of life and death over most of America's business enterprises. In the absence of a clearer delegation than that contained in the statute, it cannot be presumed that Congress granted him such unfettered power.

CONCLUSION

The judgment below should be affirmed.

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Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM—1947

No. 50

JESSE M. DONALDSON, individually and as Postmaster General of the United States,

Petitioner,

v.

READ MAGAZINE, INC., *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENTS IN ANSWER TO QUESTIONS PROPOUNDED BY THE COURT

MAC ASBILL,
W. LAWRENCE KEITT,
JOHN W. BURKE, JR.,
Counsel for Respondents.

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BRIEF FOR THE RESPONDENTS IN ANSWER TO QUESTIONS PROPOUNDED BY THE COURT

Order for Reargument

On October 24, 1947, this case was argued orally before the Court. On November 17, 1947, the Court issued an order restoring the case to the docket for reargument. The order states that on reargument counsel need not further discuss the sufficiency of the evidence to support the Postmaster General's findings, and requests counsel to discuss specific questions set forth in the order. The questions, and answers thereto, follow in the same sequence as the questions appear in the order.

Question No. 1. Does the fraud order prohibit delivery of mail and postal money orders to Facts Magazine and all its employees, including its Editor-in-Chief?

The question must be answered in the affirmative.

The fraud order directs the withholding of mail and postal money orders from (R. 22):

> "* * * Puzzle Contest, Facts Magazine; Contest Editor, Facts Magazine; Judith S. Johnson, Contest Editor; Miss J. S. Johnson, Contest Editor; Contest Editor; Facts Magazine; and Henry Walsh Lee, Editor-in-Chief, Facts Magazine, and their officers and agents as such, at New York * * *."

Facts Magazine and its Editor-in-Chief are specifically named. The prohibition further restricts delivery of mail and postal money orders to the "officers and agents as such" of Facts Magazine, and covers all its employees since every employee is an officer or agent of the magazine. Even should the words "as such" be interpreted as limiting the order to mail addressed to an officer or agent under his official title, the effect of the order would, as a practical matter, stop delivery of all business mail intended for Facts Magazine. In the course of business, envelopes addressed to any officer or employee of Facts Magazine invariably show the title or representative capacity of the addressee.

Question No. 1(a). Is the order within the Postmaster General's authority under 39 U. S. C. §§ 259, 732?

The question must be answered in the affirmative.

Title 39 U. S. C. §§ 259 and 732 authorize issuance of a fraud order withholding delivery of all mail to "any person

or company" or "to the agent or representative of any such person or company" found to be conducting a fraudulent scheme.

Every employee of Facts Magazine is an "agent or representative" of the company as those terms are generally used. Hence, the broad prohibition was authorized by the statute, assuming that the evidence justified the determination of the Postmaster General that Facts Magazine "is conducting" a fraudulent scheme.

Question No. 1(b). Do these code provisions, in violation of the First Amendment, or any other constitutional provisions, abridge the freedom of speech or press of either the senders or the sendees of the mail or money orders.

The question must be answered in the affirmative.

a. Effect of the fraud order

"Facts" is a magazine devoted to the dissemination of ideas and the discussion of current topics (R. opp. 87). By the instant fraud order it has been held to be subject to deprivation of delivery of all mail (R. 22).

The fraud order by its terms does not deny to Facts Magazine admission to the mails; nor does it expressly deprive the publisher, Read Magazine, Inc. of the use of the mails in the circulation of the magazine. The order deprives the publisher of the right to receive any mail addressed to the Magazine or its employees. Nevertheless, the order and the statutes under which it was issued operate to suppress Facts Magazine, for suppression must result from the inability of the publication to receive mail.

Denial of the right to receive mail means banishment from the subscription market, since the subscription business is almost exclusively carried out through the mail.

Old subscribers cannot renew their subscriptions; persons are prevented from becoming new subscribers. News dealers and others who desire to buy extra copies of the magazine cannot do so. Authors are unable to offer literary material to the editor for publication. Business concerns cannot negotiate with Facts Magazine for the sale of newsprint, ink and all other supplies necessary to publish a magazine. In brief, the order operates to restrict if not to prohibit the making and performing of all contracts and the engaging in all transactions essential to publication and circulation.

There is nothing in the record to show that Facts Magazine carried any advertisement or other reference to the puzzle contest after the April, 1945 issue of the magazine. Indeed, the Postmaster General took no action to exclude the magazine itself from the mail on the ground that it published fraudulent matter. There was no prosecution against the publishers of the magazine under the criminal code (18 U. S. C. A. § 338) for circulating advertisements and information concerning the puzzle contest. The sole action was directed against the senders of mail to Facts Magazine and its employees.

While the fraud order and the authorizing statutes have their greatest effect upon the sendees of mail intercepted by the Postmaster General, they also have injurious effect upon the senders of such mail. The Postmaster General may seize and detain all mail, the bulk of which includes letters concerned with unquestionably legitimate business. Senders of the intercepted mail, whether it concerns the alleged fraud or not, are denied the right to written communication with the sendees and consequently are denied the right of speech through an important medium of expression.

A temporary injunction and permanent injunction (R. 44, 57) issued by the District Court on October 2 and 19

and November 27, 1945 have permitted Facts Magazine and its employees to receive mail during the pendency of this case. Should the validity of the fraud order be sustained by this Court, the permanent injunction would be dissolved, and the fraud order would become operative for the indefinite future. On December 8, 1947, the Postmaster General voluntarily attempted to modify the fraud order so that, after that date, Facts Magazine, its editor-in-chief and other officers and agents as such were not subject to such order. However, in the absence of the injunctions, all mail addressed to Facts Magazine and all its employees, prior to December 8, 1947, would have been intercepted by the Postmaster General; and such interception would have resulted in the deprivation of rights of the senders and sendees of the intercepted mail.

b. Summary statement of Constitutional violations

The power to police the mails is exercised under the constitutional provision (Art. 1, § 8, CL. 7) that "The Congress shall have Power . . . To establish Post Offices and post Roads." This power, like all the other powers of Congress is subject to the limitations of the Bill of Rights. *Burton* v. *United States*, 202 U. S. 344, 371. Because of the effect of the fraud order upon the rights of both the sendees and senders of the mail the code provisions under which the order was issued violate several provisions of the Federal Constitutional. The code provisions abridge the freedom of press and speech guaranteed to Facts Magazine and to senders of mail and postal money orders by the First Amendment; deprive Facts Magazine of its rights under the Fourth, Fifth, Sixth and Eighth Amendments and under Article III, § 2, cl. 3, and deprive senders of mail and postal money orders of their rights under the First, Fifth, Sixth and Eighth Amendments and under Article III, § 2, cl. 3. In the following discussion of the constitutional rights of Facts Magazine and of send-

ers of intercepted mail, the rights of the magazine's editor-in-chief and other employees will be considered as merged with the rights of the magazine.

A. THE CODE PROVISIONS DEPRIVE FACTS MAGAZINE OF FREEDOM OF THE PRESS IN VIOLATION OF THE FIRST AMENDMENT

The First Amendment reads in part:

> "Congress shall make no laws . . . abridging the freedom . . . of the press . . . ."

Although early Supreme Court cases recognized that the postal power was subject to the right of freedom of the press, these cases on one theory or another upheld the exercise by Congress of almost plenary power to exclude from the mail publications deemed harmful to the efficiency of the mail service or to the welfare of the public. But more recent decisions have made manifest that the broad authority vested in the Postmaster General requires curbing in instances where freedom of the press suffers through exercise of that authority.

1. *Early decisions do not sustain code provisions against attack under First Amendment by Facts Magazine*

The Postmaster General probably will contend that the constitutionality of his authority to issue fraud orders such as the one now before this Court has long been settled. However, respondents submit that an examination of the early cases discloses that the precise question involved in the present case has not been passed upon.

Ex parte Jackson, 96 U. S. 727, was the first important case on the subject of exclusion of immoral matter from the mail. The depositor of a lottery circular challenged a statute, making it an offense to deposit letters or circulars concerning lotteries and other fraudulent schemes in the mails, as violative of the freedom of the press guaranteed by the

First Amendment. This Court justified the exclusion on the ground that use of the mails is a privilege which Congress can grant or withhold upon any conditions it pleases. The constitutional argument was by-passed by the assertion that free access to the mails was unnecessary, since other means of circulation were available.

Soon after the amendment in 1890 of the statute making it an offense to deposit newspapers and other periodicals containing lottery advertisements and information in the mails, this Court again passed upon the constitutionality of the statute in *In re Rapier*, 143 U. S. 110. This case involved a criminal prosecution for depositing in the mails a newspaper containing an advertisement of a lottery. The contention that the statute violated freedom of the press was rejected on the authority of *Ex parte Jackson* and the Court reaffirmed the privilege doctrine. It is apparent from the *Rapier* decision that the Court justified the exclusion, as it did in *Ex parte Jackson*, only because other media of circulation had been left open to the excluded matter (See dissenting opinion of Chief Justice FULLER in *Champion* v. *Ames*, 188 U. S. 321).

In *Horner* v. *United States*, 143 U. S. 207, Horner had been convicted of sending a lottery circular through the mail. Rejecting the contention that the statute authorizing the prosecution deprived the defendant of freedom of the press, the Court merely cited the *Rapier* case as decisive.

A fraud order under the statute here in question was involved in *American School of Magnetic Healing* v. *McNulty*, 187 U. S. 94. The order forbade the delivery of mail to the School because the Postmaster General had found that the School was representing through the mails that it could cure disease through mental influences. The constitutional issues raised by the School did not include abridg-

ment of the liberties under the First Amendment. Finding it unnecessary to rule on the constitutional questions which it called "grave," the Court held that the evidence did not support the Postmaster General's findings as to fraud, and that the order should not be enforced.

The constitutionality of Title 39, §§ 259 and 732, the sections of the code in question in this case, was expressly passed upon for the first time in *Public Clearing House* v. *Coyne*, 194 U. S. 497. That case dealt with a fraud order issued by the Postmaster General, authorizing the interception and return to the sender of all mail addressed to a company engaged in operating an endless chain scheme. In addition to conducting the fraudulent enterprise, the company was engaged in several other kinds of businesses on a general brokerage and commission basis. None of the business of the company involved publication of a newspaper, periodical, book or other matter for the dissemination of ideas and information to the general public. The First Amendment was not urged by the company, but the Court apparently treated the question of abridgment of freedom of the press as having been settled by *Ex parte Jackson* and *In re Rapier*.

In *Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288, this Court reviewed a postal statute which required newspapers and periodicals to publish statements of ownership, circulation and indebtedness and to label advertising as such, in order to retain the second-class mail rates. In answer to the objection that the statute abridged freedom of the press, the Court stated (p. 316):

> "... We repeat that in considering this subject we are concerned not with any general regulation of what should be published in newspapers, not with any condition excluding from the right to resort to the mails, but we are concerned solely and exclusively with the right on behalf of the publishers to continue to enjoy great privileges and advantages at the public

expense, a right given to them by Congress upon condition of compliance with regulations deemed by that body incidental and necessary to the complete fruition of the public policy lying at the foundation of the privileges accorded."

The reasoning of the Court amounted to a reaffirmation of the privilege doctrine.

Badders v. *United States*, 240 U. S. 391, sustained a conviction in a criminal prosecution for using the mails to defraud. Denial of freedom of the press was not in issue.

Exercise of the postal power to suppress future publication of a newspaper was upheld in *Milwaukee Pub. Co.* v. *Burleson*, 255 U. S. 407, a case arising under the Espionage Act prohibiting the use of the mails by publications containing matter tending to obstruct the successful prosecution of the war. The Postmaster General found that the Milwaukee Leader had frequently and persistently published articles of the kind declared non-mailable under the Act, and therefore ordered suspension of the paper's second class mailing privileges. The Supreme Court sustained the Postmaster General's suspension order, on the basis of prior decisions holding that Congress has a "practically plenary power over the mails (*Ex parte Jackson*, 96 U. S. 727; *Public Clearing House* v. *Coyne*, 194 U. S. 497, 506, 507; *Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288, 313)." The Court stated that it was reasonable to conclude that the newspaper would continue its disloyal publications, and that as a practical matter it was necessary to suspend the second class rates until the newspaper purged itself and re-applied for a second class permit.

In a dissenting opinion, Mr. Justice Brandeis argued that the Postmaster General did not have the power to deny second class mailing privileges to *future* issues of the newspaper even though *past* issues were non-mailable under the Espionage Act. Even assuming that the Post-

master General acted within his statutory authority he stated that the effect of enforcing the higher mailing rates would result in the statute's violation of several constitutional provisions, including the First Amendment. Mr. Justice HOLMES agreeing, concluded that the Postmaster General had no power to bar a newspaper from the mail in the future; that refusal of the second-class rate to a newspaper "is to make its circulation impossible"; and that the powers exercised by the Postmaster General were a serious invasion of fundamental liberties.

A fraud order issued pursuant to authority of Title 39, § 259 and 732 was again before this Court in *Leach* v. *Carlile*, 258 U. S. 138. The appellant, doing business in the name of "Organo Product Company" was engaged in selling what he called "Organo Tablets", advertised as cures for many ailments. The Postmaster General found that the product advertised was not the panacea claimed and that the appellant was perpetrating a fraud on the public. Appellant attacked the findings of the Postmaster General but raised no question as to constitutionality of the fraud order or the statute under which it was issued. The Court assumed the constitutionality of the fraud order in upholding the Postmaster General's findings. Mr. Justice HOLMES dissented on the ground that the statute imposing a previous restraint violated the First Amendment.

Early cases distinguished. It is clear from the above review of the early cases that none of them involved a situation analogous to that in the present case. Not one of the three cases ruling on fraud orders concerned a newspaper or periodical; each dealt with a company whose business was widely different in character from the business of Facts Magazine. *American School of Magnetic Healing* v. *McAnnulty, supra* (business of curing disease through mental influences); *Public Clearing House* v. *Coyne, supra* (general brokerage and commission business in several enterprises); *Leach* v. *Carlile, supra* (vending of cure-all pills). While

the prospective effect of the fraud orders in each of the three cases was such as to destroy the business of the company (as was so recognized in the *McAnnulty* case, p. 110, and the *Carlile* case, dissenting opinion, p. 141), destruction of the business would not have resulted in suppression of a publication which disseminated ideas and information to the general public. In none of the three fraud order cases under discussion was the question of freedom of the press raised by counsel.

It must be conceded that *Public Clearing House* v. *Coyne* held squarely that the fraud order could stop all mail of the company, even though some or a large part of such mail concerned only the legitimate business of the company. Respondents contend that the *Coyne* opinion giving constitutional warrant to enforcing the law by shutting off all mail was erroneous. The exigencies of effective enforcement of a law do not justify disregard of fundamental constitutional rights. *Whitney* v. *California*, 274 U. S. 357, 374 (Mr. Justice BRANDEIS concurring). Respondents contend further that recent decisions of this Court cast doubt upon the authority of the *Coyne* case as support for the power of the Postmaster General to intercept *any* mail, fraudulent or not, because the exercise of such power would result in the violation of the First Amendment.

Milwaukee Pub. Co. v. *Burleson*, *supra*, upheld action by the Postmaster General which had essentially the same effect as the action of that official against Facts Magazine. That is, the action in both instances was effective to suppress the publication of the periodical in the future because of its past conduct. The Milwaukee Leader had published disloyal articles, and future publication was curtailed by denial of the second-class mail rate; Facts Magazine was found to have been engaged in a fraudulent puzzle contest, and future publication was penalized by denial of the right to receive any mail, whether or not it related to the puzzle contest. The means of suppression was differ-

ent in the two cases, but the principle of stopping future publication because of past misconduct was applied in both cases. The two cases are distinguishable, however, on two grounds: (1) the restraint imposed on the Milwaukee Leader was based primarily on the war power, and no such power is involved in the present case; (2) the published incitements were within the "clear and present danger" rule. The *Milwaukee* case should not control the decision in the present case because of the distinctions just stated. Respondents maintain that the *Milwaukee* case was incorrectly decided for the reasons stated in the dissents of Justices BRANDEIS and HOLMES and in the majority opinions of later cases.

Other earlier postal cases differed from the present case in that they involved particular exclusions of objectionable matter and were not concerned with blanket exclusions in the future. *Ex parte Jackson, supra; In re Rapier, supra; Horner* v. *United States, supra; Badders* v. *United States, supra.* Each of these cases was a criminal prosecution for the act of placing in the mails the objectionable matter. None of the cases sought to penalize the offender by denying him mailing privileges in the future because he had been guilty of a crime in the past. As to fraud, these cases apply to Facts Magazine's puzzle contest only to the extent of holding that individual issues of the magazine or individual letters that relate to the contest, when they have been proven to do so, may be barred from the mail. The cases are not authority for the proposition that because the magazine has been conducting a fraudulent contest, all mail addressed to the magazine during the continuation of the contest and after the contest has been concluded may be intercepted by the Postmaster General. They are not authority for the further proposition that a publication containing no fraudulent material may be suppressed if the publisher has been engaged in a fraudulent scheme. *Ex parte Jackson* explicitly recognizes that exclusions from the mail may not operate to deny freedom of the press.

Lewis Publishing Co. v. *Morgan, supra,* has no bearing on the decision of the instant case. Although the *Lewis* case has been frequently cited to substantiate plenary power in Congress to regulate the mail, the statute in the case is reconcilable with the First Amendment since the requirement for the dissemination of facts is the antithesis of restraint.

2. *Code provisions are invalid under criteria applied in more recent decisions of this Court*

(i) *General principles asserted by more recent decisions.*

Freedom of the press, historically considered and as guaranteed by the United States Constitution in its First Amendment, has meant chiefly an immunity from *previous restraints* upon publication. *Grosjean* v. *American Press Co.,* 297 U. S. 233, 245-249; *Near* v. *Minnesota,* 283 U. S. 697, 713 *et seq.; Leach* v. *Carlile, supra* (dissenting opinion of Mr. Justice HOLMES, p. 141); *Patterson* v. *Colorado,* 205 U. S. 454, 462. However, the protection afforded to the press by the First Amendment is broader in scope than the mere prohibition of previous restraints. The Amendment excludes any power in Congress to shackle a free press and so to deprive the public of unrestricted dissemination of information and opinion, whether the assumed power takes the form of a previous restraint, an excessive subsequent punishment for abuse of the liberty of the press, or some other arbitrary legislative device that limits publication or circulation. *Milwaukee Pub. Co.* v. *Burleson, supra* (dissenting opinion of Mr. Justice BRANDEIS, 423, 430-436); *Grosjean* v. *American Press Co., supra,* p. 250; *Near* v. *Minnesota, supra,* pp. 714-715; *Lovell* v. *Griffin,* 303 U. S. 444, 451; *Schneider* v. *State,* 308 U. S. 147, 160-161.

The extent to which the government may abridge the freedom of the press by previous restraint is limited by the "clear and present danger rule." This rule has been

stated to mean that liberty of the press may be restricted only in instances where there is a clear and present danger that utterances by the press will bring about the substantive evils that Congress has the right to prevent. *Schenck* v. *United States*, 249 U. S. 47, 52; *Herndon* v. *Lowry*, 301 U. S. 242, 256; *Bridges* v. *California*, 314 U. S. 252, 260-263; *Thomas* v. *Collins*, 323 U. S. 516, 529; *Pennekamp* v. *Florida*, 328 U. S. 331; *Craig* v. *Harney*, 331 U. S. 367. The rule is applied equally to restraints or sanctions upon freedom of press and freedom of speech.

(ii) *Application of more recent decisions.*

Freedom of press may not be abridged by previous restraints: In 1931 the case of *Near* v. *Minnesota*, *supra*, gave new life to old concepts of protection guaranteed to the people by the First Amendment—concepts to which the early postal cases had paid lip service but had declined to apply. Many of the ideas previously urged by Justices Brandeis and Holmes achieved majority adoption in the *Near* case. In that case a Minnesota statute provided that one who engaged "in the business of regularly and customarily producing, publishing or circulating . . . a malicious, scandalous and defamatory newspaper, magazine or other periodical" was guilty of a nuisance and might be enjoined. An action was brought by the County Attorney of Hennepin County to enjoin the defendant from publishing "The Saturday Press," it being alleged that the newspaper had previously published a number of issues "largely devoted to malicious, scandalous and defamatory articles." The defendant contended that the statute violated the Fourteenth Amendment in that it deprived him of liberty of the press. In an opinion written by Chief Justice Hughes, the Court sustained this contention, holding that the Fourteenth Amendment contained, as against state action, the same guarantee of a free press as was protected against federal infringement under the First Amendment.

The Court in the *Near* case found that the Minnesota statute was a previous restraint upon publication, unjustified by the "clear and present danger" rule, and as such was inconsistent with liberty of the press under the Constitution. Concerning the scope of the doctrine of previous restraints, this Court said (pp. 713, 715-716):

> "The question is whether a statute authorizing such proceedings in restraint of publication is consistent with the conception of the liberty of the press as historically considered and guaranteed. In determining the extent of the constitutional protection, it has been generally, if not universally considered that it is the chief purpose of the guaranty to prevent previous restraints upon publication . . .
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> . . . . . .
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> "The objection has also been made that the principle as to immunity from previous restraint is stated too broadly, if every such restraint is deemed to be prohibited. That is undoubtedly true; the protection even as to previous restraint is not absolutely unlimited. But the limitation has been recognized only in exceptional cases: 'When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right.' *Schenck* v. *United States*, 249 U. S. 47, 52. No one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops. On similar grounds, the primary requirements of decency may be enforced against obscene publications. The security of the community life may be protected against incitements to acts of violence and the overthrow by force of orderly government. The constitutional guaranty of free speech does not 'protect a man from an injunction against uttering words that may have all the effect of force. *Gompers* v. *Buck Stove & Range Co.*, 221 U. S. 418, 439.' *Schenck* v. *United States, supra*. These limitations are not applicable here. . . .

"The exceptional nature of its limitations places in a strong light the general conception that liberty of the press, historically considered and taken up by the Federal Constitution, has meant, principally although not exclusively, immunity from previous restraints or censorship. The conception of the liberty of the press in this country has broadened with the exigencies of the colonial period and with the efforts to secure freedom from oppressive administration."

The *Near* case further announced that the scope of freedom of the press under federal and state constitutions is broader than the mere prohibition of previous restraints. The Court said (pp. 713-715):

". . . The liberty deemed to be established was thus described by Blackstone: 'The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous or illegal, he must take the consequence of his own temerity.' 4 Bl. Com. 151, 152; see Story on the Constitution, §§ 1884, 1889. . . .

"The criticism upon Blackstone's statement has not been because immunity from previous restraint upon publication has not been regarded as deserving of special emphasis, but chiefly because that immunity cannot be deemed to exhaust the conception of the liberty guaranteed by state and federal constitutions. The point of criticism has been 'that the mere exemption from previous restraints cannot be all that is secured by the constitutional provisions'; and that 'the liberty of the press might be rendered a mockery and a delusion, and the phrase itself a by-word, if, while every man was at liberty to publish what he pleased, the public authorities might nevertheless punish him for harmless publications' .2 Cooley, Const. Lim., 8th ed., p. 885. But

> it is recognized that punishment for the abuse of the liberty accorded to the press is essential to the protection of the public. . . . In the present case, we have no occasion to inquire as to the permissible scope of subsequent punishment."

One other holding of the *Near* case is of particular significance. The Court stated (p. 708) that "in passing upon constitutional questions the Court has regard to substance and not to mere matters of form, and that, in accordance with familiar principles, the statute must be tested by its operations and effect." Thus, the Court answered the State's contentions that the questions of the application of the statute to defendant's periodical, and of the construction of the judgment of the Trial Court were not presented for review; and that the defendant's sole attack was upon the constitutionality of the statute, however it might be applied.

Applying the principles of the *Near* case to the facts of the instant case, the code provisions here in question undoubtedly violate the freedom of the press guaranty of the First Amendment. If the right to print defamation, even habitually, cannot be made subject to previous legislative, judicial or executive restraint, publication of Facts Magazine can clearly not be restrained by administrative interception of all mail addressed to it and by the consequent destruction of the business in the manner heretofore described. The conclusion that denial of the right to receive mail is an unconstitutional previous restraint is fortified by examination of those previous restraints held by the *Near* case to be exceptions to the general rule. The safety of the Nation at war is not involved; there is no question of the "primary requirements of decency" being enforced against obscene publications; security of the community life needs no protection against "incitements to acts of violence and the overthrow by force of orderly government." If Facts Magazine was guilty of conducting a

fraudulent scheme, as charged, the Government could have begun prosecution under the criminal statute punishing the use of the mails to defraud. As the *Near* case points out, liberty of the press does not prevent punishment for abuse of the liberty. It was not open to Congress to provide the Postmaster General with a blunderbuss that strikes incidentally against fraud but principally operates as a previous restraint upon the publication of Facts Magazine.

As in the *Near* case, this Court, in passing upon the constitutionality of the code provisions, should have regard for substance, and not for form, and should test the code provisions by their operation and effect. By applying this familiar rule, this Court may disregard any claim by the Postmaster General that the fraud order in its form does not restrain the publication of Facts Magazine, but only denies the magazine the right to receive mail.

The doctrine that freedom of the press includes freedom from previous restraints received further confirmation in *Grosjean* v. *American Press Co., supra.* This was a suit by nine newspaper publishers to enjoin the imposition of a license tax, under a Louisiana statute, based on gross receipts, for the privilege of engaging in the business of publishing advertising in any newspaper, magazine, periodical, or publication having a circulation of more than 20,000 copies a week. The Court upheld the injunction on the ground that the tax operated as a previous restraint upon publication and circulation of the publications containing the taxed advertising, and was therefore an abridgment of freedom of the press under the Fourteenth Amendment. Concerning the tax as a restraint, the Court said (p. 244):

> ". . . As applied to appellees, it is a tax of two per cent, on the gross receipts derived from advertisements carried in their newspapers when, and only when, the newspapers of each enjoy a circulation of more than 20,000 copies per week. It thus operates as a restraint in a double sense. First, its effect is

to curtail the amount of revenue realized from advertising, and, second, its direct tendency is to restrict circulation. This is plain enough when we consider that, if it were increased to a high degree, as it could be if valid (A. Magnano Co. v. Hamilton, 292 U. S. 40, 45, 78 L. ed. 1109, 1114, 54 S. Ct. 599, and cases cited), it well might result in destroying both advertising and circulation."

After reviewing the history and circumstances of the adoption of the First Amendment, the Court summed up by saying (p. 249):

"In the light of all that has now been said, it is evident that . . . by the First Amendment it was meant to preclude the national government, and by the Fourteenth Amendment to preclude the states, from adopting *any form of previous restraint upon printed publication, or their circulation* . . .

. . . . . .

"The predominant purpose of the grant of immunity here invoked was to preserve an untrammeled press as a vital source of public information. The newspapers, magazines and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot be regarded otherwise than with grave concern. The tax here involved is bad not because it takes money from the pockets of the appellees. If that were all, a wholly different question would be presented. *It is bad because, in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties.* A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves." (Emphasis supplied.)

As a restraint denounced in the *Grosjean* decision, the Louisiana tax on newspapers is a far less restraint than the denial to Facts Magazine of the right to receive mail and postal money orders. That tax would not necessarily have put a newspaper or magazine out of business. As the Court pointed out, the chief vice of the tax was that, if it were valid and were increased to a high degree, the circulation of the publication might be destroyed. Facts Magazine is faced with more than a danger that its publication and circulation would be destroyed, if the Postmaster General's authority should be upheld. It is faced with a certainty that this result would be accomplished by enforcement of the fraud order. The code provisions authorizing the fraud order cannot stand the test of constitutionality applied in the *Grosjean* case.

As previously noticed herein, dissenting opinions by Justices BRANDEIS and HOLMES in *Milwaukee Pub. Co.* v. *Burleson, supra,* argued the proposition that denial to a newspaper of the right to use the mail, because of past misuse of the mail, is an abridgment of freedom of the press under the First Amendment. Mr. Justice BRANDEIS recognized a general police power over the material carried in the mail, subject always to the limitations of the First Amendment. In the exercise of the power to exclude material from the mail, the Postmaster General may not exclude material that has not been found to be objectionable, for said Mr. Justice BRANDEIS (p. 423):

> "If such power were possessed by the Postmaster General, he would, in view of the practical finality of his decisions, become the universal censor of publications. For a denial of the use of the mail would be for most of them tantamount to a denial of the right of circulation."

Stating that Congress could not put indirect limitations upon the freedom of the press "which if directly attempted would be unconstitutional" Mr. Justice BRANDEIS reasoned

that denial of the second-class mail rate to a publisher was in effect a denial of the right to use the mail (p. 431):

> ". . . It is argued that although a newspaper is barred from the second-class mail, liberty of circulation is not denied; because the first and third-class mail and also other means of transportation are left open to a publisher. Constitutional rights should not be frittered away by arguments so technical and unsubstantial. 'The Constitution deals with substance, not shadows. Its inhibition was levelled at the thing, not the name.' *Cummings* v. *Missouri*, 4 Wall. 277, 325."

Although the dissent of Mr. Justice HOLMES was primarily directed at the lack of authority in the statutes to sustain the Postmaster General's actions, rather than at their constitutionality, certain parts of the opinion do deal with constitutionality. Thus, the opinion stated (pp. 437-8):

> ". . . But the only power given to the Postmaster is to refrain from forwarding the papers when received and to return them to the senders. Act of June 15, 1917, c. 30, Title XII, 40 Stat. 217, 230. Act of May 16, 1918, c. 75, 40 Stat. 553, 554. He could not issue a general order that a certain newspaper should not be carried because he thought it likely or certain that it would contain treasonable or obscene talk. The United States may give up the Post Office when it sees fit but while it carries it on the use of the mails is almost as much a part of free speech as the right to use our tongues, and it would take very strong language to convince me that Congress ever intended to give such a practically despotic power to any one man . . .
>
> ". . . when I consider the ease with which the power claimed by the Postmaster could be used to interfere with very sacred rights, I am of opinion that the refusal to allow the relator the rate to which it was entitled whenever its newspaper was carried, on the ground that the paper ought not to be carried at all, was unjustified by statute and was a serious attack upon liberties that not even the war induced Congress to infringe."

The reasoning of Mr. Justice BRANDEIS in his dissent is applicable to the present case. He stated (p. 418):

> "The scope of the Postmaster General's alleged authority is confessedly the same whether the reason for the non-mailable quality of the matter inserted in a newspaper is that it violates the Espionage Act, or the copyright laws, or that it is part of a scheme to defraud, or concerns lotteries, or is indecent, or is in any other respect matter which Congress has declared shall not be admitted to the mails."

In the *Burleson* case, past issues of the newspaper were non-mailable because of their disloyal assertions, and future issues were in effect barred from the mail by denial of the second-class rate. In the present case, Facts Magazine had in the past conducted an allegedly fraudulent puzzle contest, and future issues of the magazine were in effect barred from the mail by denial of the magazine's right to receive mail. The second-class rate was denied on the assumption that the newspaper would continue to print disloyal articles; the right to receive mail was denied on the assumption that Facts Magazine would continue to conduct fraudulent puzzle contests. The means of stopping publication was indirect in both cases, and it was urged by the Government in the former case and will probably be urged in the latter case that there was no actual restraint on publication. However, there is no doubt that denial of the right to receive mail would stop publication of Facts Magazine as surely as denial of the second-class rate stopped publication of the Milwaukee Leader. It must be evident that abridgment of Facts Magazine's right to freedom of the press is just as drastic as was the abridgment about which Justices BRANDEIS and HOLMES complained in the *Burleson* case.

"Clear and present danger" rule does not sustain code provisions: In *Schenck* v. *United States, supra,* Mr. Justice HOLMES devised a new rule to apply to limitations on freedom of speech and the press. The limitation con-

sidered in that case was the prohibition against mailing printed circulars in violation of the Espionage Act. The rule as stated is (p. 52):

> "The question in every case is whether the words are used in such circumstances and are of such nature as to create a clear and present danger that they will bring about the substantive evils that Congress has the right to prevent."

The "clear and present danger rule" was later applied by this Court in a number of cases and given more comprehensive meaning. For example, *Bridges* v. *California*, 314 U. S. 263, a case involving alleged contempt by a publication, contained this statement (p. 263):

> "What finally emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished. Those cases do not purport to mark the furthermost constitutional boundaries of protected expression, nor do we here. They do no more than recognize a minimum compulsion of the Bill of Rights. For the First Amendment does not speak equivocally. It prohibits any law 'abridging the freedom of speech, or of the press.' It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society will allow."

A recent statement of the application of the "clear and present danger rule" in all cases involving the liberties safeguarded by the First Amendment is found in *Thomas* v. *Collins*, 323 U. S. 516, 529-530, which passed on a Texas statute requiring labor organizers to register before soliciting members for a union:

> The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is

perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. *Cf. Schneider* v. *State* 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Prince* v. *Massachusetts*, 321 U. S. 158. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice. Compare *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152-153.

"For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore in our tradition to follow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly. It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical are inseparable. They are cognate rights, cf. *De-Jonge* v. *Oregon*, 299 U. S. 353, 364, and therefore are united in the First Article's asurance. Cf. 1 Annals of Congress 759-760."

Applying the "clear and present danger rule" to the facts of the instant case, it is plain that a puzzle contest conducted by Facts Magazine, even though held to be fraudulent, does not present a "substantive evil" so "ex-

tremely serious" that Facts Magazine must be suppressed in order to correct the "evil." The public interest in preventing use of the mails to defraud could be protected by punishment of those responsible for the fraud, without the drastic measure of intercepting all mail addressed to Facts Magazine, fraudulent and non-fraudulent alike or by action of the Federal Trade Commission specifically declaring what statements shall be deemed deceptive. The public interest is better served by allowing the magazine itself, which is not charged with containing fraudulent matter, to continue giving information to the public.

The Code provisions violate First Amendment in its broadest scope: The "clear and present danger" cases construe the First Amendment as much broader than the prohibition of previous restraints. For example, the case of *Schneider* v. *State*, 308 U. S. 147, 160-161, has the following to say regarding the scope of protection under the First Amendment:

> "In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights."

It must be concluded that the code provisions at issue are violative of Facts Magazine's right to a free press not merely because they constitute a "previous restraint" but because they are unneeded to combat a "clear and present danger." These provisions interfere with a clear public

interest in the dissemination of facts and ideas. It matters not whether the fraud order be regarded as a previous restraint, excess punishment for a past abuse or an arbitrary exercise of the postal power, the liberty of the Facts Magazine to enjoy a free press is nevertheless abridged through denial of the right to receive mail and through the consequent destruction of the business of publishing it.

The order of the Postmaster General, even as modified, violates the First Amendment: The fraud order as purportedly modified by the Postmaster General on December 8, 1945 abridges respondent Johnson's right of freedom of speech as contest editor. Although, the fraud order does not directly affect matter deposited by her in the mails, it does bar receipt by her of all mail addressed to her as contest editor as a sanction for what she had previously deposited. In this way the order bars communication through the mails, that is, interchange of written speech, with every one in the world. Freedom of speech means more than the right to expound one's own ideas. It means the right of untrammeled discussion. Dissenting opinion by Mr. Justice FRANKFURTER; *Bridges* v. *California*, 314 U. S. 252, 281.

Since there is an obvious abridgment of freedom of speech of respondent Johnson as contest editor, it is necessary to determine whether or not that abridgment is reconcilable with the First Amendment. Concededly the right of freedom of speech guaranteed by the constitution is not an absolute one. *Patterson* v. *Colorado*, 205 U. S. 454. The protection even as to previous restraints is not absolutely unlimited. *Near* v. *Minnesota*, 283 U. S. 697, 715. The validity of previous restraints upon free speech depends upon the efficiency of the cause (the utterance) to produce the effect (the evil) which Congress has a right to prevent. *Schenck* v. *U. S.*, 249 U. S. 47, 52; *Bridges* v. *California*, 314 U. S. 252; *Pennekamp* v. *Florida*, 328 U. S. 331.

The fraud order was issued on October 1, 1945 (R. 22). Its operation was temporarily stayed by order of the United States District Court on October 2, 1945 (R. 45). This stay was continued by order of the same court dated October 19, 1945 (R. 45). A permanent injunction was granted on November 27, 1945 (R. 57). The contest on which the fraud order was based terminated on October 27, 1945 (R. 25).

In view of the termination of the contest during the course of the litigation, the fraud order if put into operation can have no effect upon the contest on which it was based but can affect only other contests which might be conducted by respondent Johnson. In order to sustain the validity of the fraud order in so far as future contests are concerned it must appear (1) that a contest is either in progress or contemplated and (2) that such contest is fraudulent. Otherwise the validity of the order depends upon the finding by the Postmaster General that respondent has conducted a fraudulent contest and therefore that all future contests will be fraudulent. This is a logical and legal *non-sequitur*. There is a presumption, not that people will violate the law, but that they will observe it.

To justify previous restraint upon respondent Johnson's freedom of speech it must be clear that her speech either is producing or will clearly produce the evil which Congress is authorized to prevent. *Schenck* v. *U. S., supra.* By "clear" and "present" it is meant that the danger is obvious and existent. *Whitney* v. *California*, 274 U. S. 357. Assuming, *arguendo,* that at the time the Postmaster General issued his original order there was a clear and present danger that respondent's utterances would produce the fraud which Congress was authorized to prevent, at the present time when the Postmaster General seeks to put his order into effect the issue of whether or not the mails are being used in a scheme to defraud has become nonexistent.

B. THE CODE PROVISIONS DEPRIVE THE SENDERS OF MAIL TO FACTS MAGAZINE OF FREEDOM OF SPEECH IN VIOLATION OF THE FIRST AMENDMENT

The First Amendment reads in part:

> "Congress shall make no laws . . . abridging the freedom of speech . . ."

The interception of the mail of the senders deprives them of all communication with the sendee, regardless of whether the mail concerns the puzzle contest or matters of a business nature having no relation to the contest. Such a ban on free communication is inconsistent with the guarantee of free speech.

The dissenting opinion of Mr. Justice HOLMES in *Leach* v. *Carlile,* 258 U. S. 138, 140, concurred in by Mr. Justice BRANDEIS, is the only instance in which the rights of the senders of mail intercepted by a fraud order have received attention in a Supreme Court case. The question was not raised by counsel in that case. Perceiving that the statutes under which fraud orders are issued impose a previous restraint on speech, Mr. Justice HOLMES said (pp. 140-141):

> "The transmission of letters by any general means other than the postoffice is forbidden by the Criminal Code, §§ 183-185. Therefore, if these prohibitions are valid, this form of communication with people at a distance is through the postoffice alone; and notwithstanding all modern inventions letters still are the principal means of speech with those who are not before our face. I do not suppose that anyone would say that the freedom of written speech is less protected by the First Amendment than the freedom of spoken words. Therefore I cannot understand by what authority Congress undertakes to authorize anyone to determine in advance, on the

> grounds before us, that certain words shall not be uttered. Even those who interpret the Amendment most strictly agree that it was intended to prevent previous restraints. We have not before us any question as to how far Congress may go for the safety of the Nation. The question is only whether it may make possible irreparable wrongs and the ruin of a business in the hope of preventing some cases of a private wrong that generally is accomplished without the aid of the mail. Usually private swindling does not depend upon the postoffice. If the execution of this law does not abridge freedom of speech I do not quite see what could be said to do so."

The dissent criticized the holding in *Ex parte Jackson* that the First Amendment was not abridged because other media of distribution was open to the excluded matter. It then went on to conclude (p. 141):

> "... The decisions thus far have gone largely if not wholly on the ground that if the Government chose to offer a means of transportation which it was not bound to offer it could choose what it would transport; which is well enough when neither law nor the habit that the Government's action has generated has made that means the only one. But when habit and law combine to exclude every other it seems to me that the First Amendment in terms forbids such control of the post as was exercised here. *I think it abridged freedom of speech on the part of the sender of the letters and that the appellant had such an interest in the exercise of the right that he could avail himself of it in this case. Buchanan* v. *Warley,* 245 U. S. 60." (Emphasis supplied.)

The deprivation of the right of free speech of the senders of mail in the present case is much more apparent than in *Leach* v. *Carlile.* The Organo Company in *Leach* v. *Carlile* was engaged in selling "Organo Tablets through fraudulent misrepresentations sent through the mails, and the senders of the mail intercepted by the fraud order must have been with few exceptions the victims of the fraud.

The rights of these victims to the freedom of communication were the rights defended by Mr. Justice HOLMES. However, the senders of mail to Facts Magazine were chiefly persons who wrote concerning business totally unrelated to the puzzle contest.

Freedom of speech cases decided by the Supreme Court subsequent to *Leach* v. *Carlile* have not dealt with prior abridgments of the First Amendment by express application of "previous restraints" such as in the *Burleson* case dealing with freedom of press. However the guarantee of immunity from previous restraints under the First Amendment apply to freedom of speech as well as to freedom of the press, since the two freedoms have been held to be cognate rights and entitled to the same measure of protection. *De Jonge* v. *Oregon*, 299 U. S. 353, 364; *Grosjean* v. *American Press Co., supra*, p. 244; *Thomas* v. *Collins, supra*, pp. 529-530. *Patterson* v. *Colorado, supra*. Consequently, the principles of *Grosjean* v. *American Press Co., supra*, and *Near* v. *Minnesota, supra*, concerning pervious restraints support the dissenting opinion in *Leach* v. *Carlile*. There is no doubt at all that the previous restraint imposed on Facts Magazine by the interception of mail addressed to it is also a previous restraint on the senders of the intercepted mail. As to Facts Magazine, this restraint has been shown to be an abridgment of freedom of the press; as to the senders of mail to Facts Magazine, the same restraint is an abridgment of freedom of speech.

The "clear and present danger" rule has been applied in a great variety of cases in which the scope of constitutional protection of freedom of expression was an issue. *Thomas* v. *Collins, supra; Board of Education* v. *Barnette*, 319 U. S. 624, 639; *Bridges* v. *California, supra*, pp. 260-263, 314 (and cases cited therein); *Herndon* v. *Lowry, supra*, p. 255. As stated in *Herndon* v. *Lowry, supra* (p. 258):

> "The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government. The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principle of the Constitution."

The danger to the welfare and safety of this country resulting from the conduct of a puzzle contest is not so substantial or imminent as to justify infringement of the rights of free speech guaranteed to senders of mail under the First Amendment. There are legislative means of stopping a puzzle contest, if it be fraudulent, other than interception of the mail. (See Federal Trade Commission Act, 15 U. S. C. 45.)

Question No. 2. Does the fraud order prohibit indefinitely the delivery of mail or money orders which relate to subject matters or contests other than the contest on which the order is based?

The question must be answered in the affirmative.

The fraud order (R. 22-23) is without any time limit and is therefore applicable throughout the indefinite future. The order does not differentiate between particular mail or postal money orders which relate to the Hall of Fame Contest and general mail and money orders which relate to other matters having no connection with said contest.

The fraud order forbids payment of "*any* postal money order drawn to the order of said concerns and parties" (including those concerns and parties specifically designated and their officers and agents) and directs the Postmaster at New York "to inform the remitter of *any* such

postal money order that payment thereof has been forbidden, and that the amount thereof will be returned upon the presentation of the original order or a duplicate thereof applied for and obtained under the regulations of the Department." The fraud order instructs the Postmaster at New York "to return *all* letters, whether registered or not, and other matter * * * directed to the said concerns and parties to the postmasters at the offices at which they were originally mailed, to be delivered to the senders thereof, with the words 'Fraudulent: Mail to this address returned by order of the Postmaster General' plainly written or stamped upon the outside of such letter or matter." The order further provides for the return of letters and matter to the appropriate dead letter branch where the senders cannot be identified. The fraud order is unambiguous. There is no basis for construing the order other than as it reads.

Question No. 2(a). Is the order within the Postmaster General's statutory authority?

The question must be answered in the affirmative.

Title 39 U. S. C. §§ 259 and 732 empower the Postmaster General to determine whether any person or company "is conducting" a fraudulent scheme and upon such determination authorize him to instruct postmasters at which letters or other matter arrive directed to such person or company, their agents and representatives, "to return *all* such registered letters" and "all letters or matter sent by mail", "to the postmaster at the office at which they were originally mailed, with the word 'Fraudulent' plainly written or stamped upon the outside thereof," and to forbid the payment by any postmaster to said person or company of "*any* postal money-orders drawn to his or its order, or in his or its favor, or to the agent of any such person or company". (Emphasis supplied.)

Question No. 2(b). Are these code provisions in conflict with the Constitution of the United States?

The question must be answered in the affirmative.

In addition to violating the First Amendment as discussed under question 1(b) the code provisions violate the Fourth, Fifth, Sixth and Eighth Amendments and Article III of the Constitution. These violations arise from the fact that the fraud order prohibits the delivery of innocent mail for an indefinite time, even after the fraud has ceased and authorizes seizures of all mail addressed to respondents.

A. ENFORCEMENT OF CODE PROVISIONS RESULT IN AN UNREASONABLE SEARCH AND SEIZURE IN VIOLATION OF THE FOURTH AMENDMENT

The interception of mail addressed to Facts Magazine constituted a violation of that portion of the Fourth Amendment reading:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ."

Mail addressed to Facts Magazine becomes its property upon deposit in the mail. *School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94, 110. Use of the mails by the senders of mail addressed to Facts Magazine is a property right of the user. *Milwaukee Pub. Co.* v. *Burleson, supra*, p. 432 (dissent); *Payne* v. *National Railway Publishing Co.*, 20 App. D. C. 581, app. dismissed 192 U. S. 60; *Hoover* v. *McChesney*, 81 Fed. 472, 480. This being so, the interception of mail addressed to Facts Magazine, without regard to whether the mail was fraudulent, was an unlawful seizure.

Hoover v. *McChesney, supra*, involving a fraud order directed at a lottery, is squarely in point. The District Court said (p. 481):

"If we are correct in concluding that the use of the postal service of the United States by a citizen thereof is a right in the nature of a property right, then it must follow that the order of the 17th of February, 1896, of the postmaster general, which finds complainant guilty of a violation of the postal laws, and prohibits to him the use of the postal service of the United States as far as the receiving of mail is concerned, during his pleasure, is not due process of law within the constitutional meaning. *In this connection we think the fourth amendment to the constitution is also applicable,* which provides that 'the right of the people to be secured in their persons, houses, papers, and effects against unreasonable search and seizures shall not be violated, and no warrant shall issue but upon probably cause supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.' The supreme court, by Justice Field, in the case of Ex parte Jackson, says:

'A distinction is to be made between different kinds of mail matter, between what is intended to be kept free from inspection, such as letters and sealed packages subject to letter postage, and what is open to inspection, such as newspapers, magazines, pamphlets, and other printed matter purposely left in a condition to be examined. Letters and sealed packages of this kind in the mail are as fully guarded from examination and inspection, except as to their outward form and weight, as if they were retained by the parties forwarding them in their own domiciles. *The constitutional guaranty of the right of the people to be secured in their papers against unreasonable search and seizure extends to their papers thus closed against inspection wherever they may be; whilst in the mail they can only be opened and examined under like warrant, issued under similar oath or affirmation, particularly describing the thing to be seized, as is required when papers are subjected to search in one's own household.* No law of congress can place in the hands of the officials of the postal service any authority to invade the secrecy of letters and such sealed packages in the mail, and all

regulations adopted as to mail matter of this kind must be in subordination to the great principle embodied in the fourth amendment of the constitution.'" (Emphasis supplied.)

In addition to making an unlawful "seizure" of mail under the code provisions, the Postmaster General makes an unlawful "search". This is true in spite of the fact that Title 39, § 259 expressly denies authorization for "any postmaster or other person to open any letter not addressed to himself." As already seen, property to the mail passes to Facts Magazine when the mail is deposited for transmission. Mail which cannot be returned to the senders, is consigned to the dead letter office (R. 22). There the letters are held for a year, then opened, and if their senders cannot be identified the money is stripped from them and retained by the Post Office Department (39 U. S. C. 408; C. F. R. 13:10).

In *Public Clearing House* v. *Coyne*, *supra*, pp. 510-511, the Fourth Amendment was unsuccessfully raised as an objection to the interception of mail, fraudulent and non-fraudulent. Considering the claim that the intercepted mail was the property of the sendee and had been unlawfully confiscated, the Court decided that regardless of property rights (which it did not determine) the Postmaster General did not wrongfully seize the mail by detaining and returning it to the sender. However, the *Coyne* case did not deal with the application of the Amendment to an indefinite order or to a seizure that had taken place *after the fraud had ceased*. At most the *Coyne* case stands only for the inapplicability of the Amendment to fraudulent and legitimate mail alike, *while the fraud continues to exist*. After the fraud ended in the *Coyne* case, there could have been no valid reason for stopping any mail, which was innocent of fraud. Respondents contend that the *Coyne* case was incorrectly decided and should be overruled, insofar as it holds that the Fourth Amendment is not violated by the seizure, *at any time*, of any mail.

B. THE CODE PROVISIONS DEPRIVE FACTS MAGAZINE AND SENDERS OF PROPERTY IN VIOLATION OF FIFTH AMENDMENT

The Fifth Amendment reads in part:

> "No person shall be . . . . deprived of life, liberty, or property, without due process of law . . ."

The right to use the mails by sending or receiving mail is a property right. *Milwaukee Pub. Co. v. Burleson, supra* (dissenting opinion of Mr. Justice BRANDEIS); *School of Magnetic Healing* v. *McAnnulty, supra*, p. 110; *Payne* v. *National Railway Publishing Co., supra; Hoover* v. *McChesney, supra*, p. 480. In the *Burleson* case, Mr. Justice BRANDEIS said:

> "The right which Congress has given to all properly circumstanced persons to distribute newspapers and periodicals through the mails is a substantial right. . . .
>
> "The contention that, because the rates are noncompensatory, use of the second-class mail is not a right but a privilege which may be granted or withheld at the pleasure of Congress, rests upon an entire misconception, when applied to individual members of a class. The fact that it is largely gratuitous makes clearer its position as a right; for it is paid for by taxation."

In support of his view that the use of the mails is a substantial right, Mr. Justice BRANDEIS cited *Hoover* v. *McChesney, supra*, which states that the right to use the mails is a property of both the sender and receiver of mail (p. 480):

> "It is not to be overlooked that the establishment of the postal service and its operation is the exercise of a governmental function; that the money which pays for this perfect postal system is raised by the postage charged, and all deficits paid out of

> the common treasury of the United States; that it is a monopoly which excludes not only the states, but all individuals, and that it has become a part of the business operations of the citizens of the United States, and an indispensable part in some kinds of business; and that this right to the use of the mails by sending and receiving mail is a most valuable one to the citizens, and one the depriving of which would destroy the business and the living of very many of the citizens of the United States."

In *School of Magnetic Healing* v. *McAnnulty, supra,* the right of a person to receive mail that has become his property upon deposit in the post office, and the destructive effect on the business of the receiver when that right is denied were recognized. The observations by this Court are particularly applicable to Facts Magazine and its editor-in-chief.

> "In our view of these statutes the complainants had the legal right under the general acts of Congress relating to the mails to have their letters delivered at the post office as directed. They had violated no law which Congress had passed, and their letters contained checks, drafts, money orders and money itself, all of which were their property as soon as they were deposited in the various post offices for transmission by mail. They allege, and it is not difficult to see that the allegation is true, that, if such action be persisted in, these complainants will be entirely cut off from all mail facilities, and their business will necessarily be greatly injured if not wholly destroyed, such business being, so far as the laws of Congress are concerned, legitimate and lawful" (p. 110).

Mr. Justice HOLMES dissenting in *Leach* v. *Carlile,* 258 U. S. 138, 141, doubted the constitutional validity of the drastic expedient here in question:

> "The question is only whether it may make possible irreparable wrongs and the ruin of a business in the hope of preventing some cases of a private

> wrong that generally is accomplished without the aid of the mail."

The following terse comment in *Walker* v. *Popenoe*, 149 F. (2d) 511, 513, is particularly pertinent where the business destroyed by a fraud order is a publishing business:

> "To deprive a publisher of the use of the mails is like preventing the seller of goods from using the principal highway which connects him with his market."

In *Pike* v. *Walker*, 73 App. D. C. 289, 291, 121 F. (2d) 37, 39, it was said:

> "Whatever may have been the voluntary nature of the postal system in the period of its establishment, it is now the main artery through which the business, social, and personal affairs of the people are conducted and upon which depends in a greater degree than upon any other activity of government the promotion of the general welfare. Not only this, but the postal system is a monopoly which the government enforces through penal statutes forbidding the carrying of letters by other means. It would be going a long way, therefore, to say that in the management of the Post Office the people have no definite rights reserved by the First and Fifth Amendments of the Constitution . . ."

It is conclusive that Facts Magazine and the senders of mail to Facts Magazine have been deprived of substantial property rights through the application of the code provisions permitting interception of all mail addressed to Facts Magazine. It is likewise conclusive that such deprivation of rights is a deprivation of the right to carry on business. Denial of the right to use the mails is based on supposed past misuse of the mails by Facts Magazine in conducting a puzzle contest as an incident of its main business of publishing a magazine. In order to stop the puzzle contest, the code provisions prohibit the magazine from

receiving mail of any kind, regardless of whether it is related to the puzzle contest. The senders as well as the magazine are deprived of valuable business rights by arbitrary legislation. Respondents have sufficient interest in these rights of the senders to raise the question in their own behalf.

The Supreme Court has been jealous to protect against arbitrary deprivations of the right to do business. *Adair* v. *United States*, 208 U. S. 161; *Coppage* v. *Kansas*, 236 U. S. 1; *Adams* v. *Tanner*, 244 U. S. 590; *Allgeyer* v. *Louisiana*, 165 U. S. 578. Respondents submit that the property rights of Facts Magazine and the senders of mail to use the mails in the transaction of business are entitled to protection because in application the code provisions take property without due process of law in violation of the Fifth Amendment.

C. THE CODE PROVISIONS VIOLATE ARTICLE III, § 2, CL. 3, OF THE CONSTITUTION, BY SUBJECTING FACTS MAGAZINE AND SENDERS TO PUNISHMENT WITHOUT TRIAL BY JURY

The code provisions violate Article III, § 2, cl. 3, which reads in part:

> "The Trial of all crimes . . . shall be by Jury . . . ."

The fraud order is a punitive measure. Although it did not purport to hold Facts Magazine or the senders guilty of a crime under the criminal code, its *effect was to convict* the magazine and the senders of using the mails to defraud. Although the order did not by its terms ban Facts Magazine from the mails, the effect of the order was the same, because denial of the right to receive mail would inevitably destroy the magazine's business. Such action by the Postmaster General in order to stop a puz-

zle contest is tantamount to the levying of a very heavy fine upon Facts Magazine for supposed transgressions in the past, and punishment of the senders by denying them their legal rights to use the mails. The amount of the fine on the magazine is the value of the business. There is no legislative limitation on the amount of the fine which can thus be imposed by the Postmaster General.

Considering an analogous situation in *Milwaukee Pub. Co.*, 255 U. S. 407, Mr. Justice BRANDEIS said in his dissenting opinion (p. 434):

> ". . . I am not aware that any other civil administrative officer has assumed, in any country in which the common law prevails, the power to inflict upon a citizen severe punishment for an infamous crime. Possibly the court would hold that Congress could not, in view of Article III of the Constitution, confer upon the Postmaster General as a mere incident in the administration of his department, authority to issue an order which could operate only as a punishment. See *Wong Wing* v. *United States*, 163 U. S. 228, 235-237."

Since the trial and punishment of crimes is a function which the Constitution entrusts to the judiciary rather than to the executive department, the action of the Postmaster General, pursuant to the code provisions, was a clear infringement of Facts Magazine's and the senders' constitutional rights to a trial by jury.

D. THE CODE PROVISIONS DENY FACTS MAGAZINE AND SENDERS THEIR RIGHTS TO A TRIAL IN ACCORDANCE WITH THE SIXTH AMENDMENT

The Sixth Amendment reads in part:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . and to be

> informed of the nature and cause of the accusation; to be confronted with the witnesses against him . . . ."

A very heavy fine has been imposed on Facts Magazine by the Postmaster General, the amount of the fine being the value of the business that will be destroyed. This fine has been imposed because the Postmaster General found that the publisher had been using the mails in a fraudulent puzzle contest, which was the practical equivalent of finding the publisher guilty of the crime of using the mails to defraud. Respondents contend, in view of the Sixth Amendment, that Congress is without power to confer upon the Postmaster General authority to inflict indirectly such a substantial punishment. *Milwaukee Pub. Co.* v. *Burleson, supra* (dissenting of opinion of Mr. Justice BRANDEIS); *Callan* v. *Wilson*, 127 U. S. 540; *Thompson* v. *Utah*, 170 U. S. 343.

Violation of the senders' rights is even more obvious. To deprive them of the right to transmit mail has the effect of punishing them for using the mails to defraud, an offense for which they have not had a trial by jury.

E. THE CODE PROVISIONS INFLICT UNUSUAL PUNISHMENT ON FACTS MAGAZINE AND SENDERS IN VIOLATION OF THE EIGHTH AMENDMENT

The Eighth Amendment provides:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

That punishment has been inflicted on Facts Magazine and innocent senders is clear. Because an administrative officer found that the magazine had been conducting a fraudulent puzzle contest, he issued an order—with full authority under the code provisions—the enforcement of

which would wreck the entire business, fraudulent and non-fraudulent alike. To deprive the senders of the right to transmit mail is punishment for no offense.

Loss to the business through inability to receive mail is in its nature indefinite in amount, but the value of the business and the length of time it could remain alive under the fraud order are factors in the ultimate determination of the amount of loss. The amount is in the nature of an excessive fine for past infractions of the *criminal* law.

It is submitted that the code provisions violate the Eighth Amendment. Clear reasoning in support of this conclusion is found in the following excerpt from the dissenting opinion of Mr. Justice BRANDEIS in *Milwaukee Pub. Co.* v. *Burleson, supra*, page 435:

> ". . . Every fine imposed by a court is definite in amount. Every fine prescribed by Congress is limited in amount. Statutes frequently declare that each day's continuation of an offence shall constitute a new crime. But here a fine imposed for a past offence is made to grow indefinitely each day—perhaps throughout the life of the publication. . . . It was assumed in *Waters-Pierce Oil Co.* v. *Texas* (No. 1), 212 U. S. 86, 111, that an excessive fine, even if definite, would violate the Eighth Amendment. Possibly the court, applying the Eighth Amendment, might again, as in *Weems* v. *United States*, 217 U. S. 349, 381, make clear the difference between unrestrained power and that which is exercised under the spirit of constitutional limitations formed to establish justice."

Deprivation of second-class mailing rates in the *Burleson* case was no more excessive a fine or unusual a punishment than the deprivation of the right to receive mail in the instant case. In both cases the action of the Postmaster General was capable of destroying the publication.

Question No. 3. Assuming that the order is in conflict with the Code provisions or the Constitution, can it be modified in such way as to free it from statutory or constitutional objections? If so, by whom can the order be modified and by what procedure?

The first of these questions must be answered in the negative.

Fraud order is without valid statutory basis: The fraud order was issued under authority of Title 39 U. S. C. §§ 259 and 732. These sections are unconstitutional in their entirety for the reasons heretofore shown. Therefore the fraud order may not be modified but must fall in its entirety.

Since no valid statutory basis ever existed for its issuance, the void order may not be modified by any Court or by the Postmaster General.

The Code Provisions being unconstitutional are not a law—they bind no one and protect no one. *Little Rock & F. S. R. Co.* v. *Worthen*, 120 U. S. 97, 101. The Code Provisions are as inoperative as if they had never been passed, for an unconstitutional act is not a law. *Chicago, I. & L. R. Co.* v. *Hackett*, 228 U. S. 559, 566.

The Code Provisions are invalid under Rules of Statutory Construction applied by this Court: Should the Court hold that Congress has the power to intercept all fraudulent mail but is without power to intercept mail having no relation to a prohibited enterprise, the Code Provisions are nevertheless unconstitutional in their entirety. In the instant case, there can be no separation of the legal from the illegal in the Code Provisions. The language of the Code Provisions shows clearly that the power granted extends not only to fraudulent mail but embraces prohibition of delivery of *all* mail and postal money orders, a power which is beyond the authority of Congress.

The code provisions are clearly unconstitutional under the principle of statutory construction applied in *The First Employers' Liability Case*, 207 U. S. 463, because they are too broad in their coverage. In that case the statute covered every common carrier engaged in interstate commerce as a common carrier and made the carrier liable to "any of its employees" for all damages resulting from the negligence of any officer, agent, or employee of the carrier, etc. Thus, the Act of Congress embraced subjects (interstate employees) within the authority of Congress to regulate commerce but also included subjects (intrastate employees) not within its constitutional power; the two subjects were so interblended in the statute that they were incapable of separation and the statute was held to be unconstitutional and non-enforcible.

To the argument that the statute could be interpreted so as to confine its operation only to interstate commerce by construing the words "any employee" in the statute to mean any employee when such employee is engaged only in interstate commerce, the Court said (p. 500):

> "But this would require us to write into the statute words of limitation and restriction not found in it."

And further said (pp. 501-2):

> "The principles of construction invoked are undoubted, but are inapplicable. Of course, if it can be lawfully done, our duty is to construe the statute so as to render it constitutional. But this does not imply, if the text of an act is unambiguous, that it may be rewritten to accomplish that purpose. Equally clear is it, generally speaking, that where a statute contains provisions which are constitutional and others which are not, effect may be given to the legal provisions by separating them from the illegal. But this applies only to a case where the provisions are separable and not dependent one upon the other, and does not support the contention that that which

is indivisible may be divided. Moreover, even in a case where legal provisions may be severed from those which are illegal, in order to save the rule applies only where it is plain that Congress would have enacted the legislation with the unconstitutional provisions eliminated. All these principles are so clearly settled as not to be open to controversy * * *

"As the act before us by its terms relates to every common carrier engaged in interstate commerce and to any of the employes of every such carrier, thereby regulating every relation of a carrier engaged in interstate commerce with its servants and of such servants among themselves, we are unable to say that the statute would have been enacted had its provisions been restricted to the limited relations of that character which it was within the power of Congress to regulate."

The code provisions here under attack are unconstitutional under the rule of interpretation applied in *Butts* v. *Merchants & Miners Transportation Company*, 230 U. S. 126, 133, 138. There, the Court held that an act in excess of the power of Congress is invalid in its entirety when it is not possible to separate that which is constitutional from that which is not.

In *Illinois Central Railroad Company* v. *McKendree*, 203 U. S. 514, the Court held void an *order* of the Secretary of Agriculture purporting to fix a quarantine line under the Cattle Contagious Disease Act because it applied in terms to all shipments, whether interstate or intrastate, and was an illegal attempt to regulate intrastate commerce. The Court said (p. 529): "The order is in terms single, and indivisible".

Under the reasoning in the *McKendree* case, both the code provisions and the fraud order in the instant case are "in terms single, and indivisible", prohibiting delivery of *all* mail and postal money orders regardless of their relation to any fraudulent scheme. Since the code provisions

and the fraud order are void because of their coverage, it must follow that the void fraud order may not be modified under any procedure.

The fraud order cannot be modified by any valid procedure.

No Court may modify the void fraud order: Aside from the invalidity of the Code Provisions and fraud order, no Court may modify the fraud order. § 259 only purports to authorize the Postmaster General to issue a fraud order "upon evidence satisfactory to him" that any person or company "is conducting" a fraudulent scheme. Here, the fraud order was issued upon a determination by the Postmaster General predicated upon the assumption that §§ 259 and 732 were constitutional. The assumption being false, no Court may say what determination the Postmaster General would have made had he realized the limitations placed upon him by the Constitution.

In *Illinois Central Railroad Company* v. *McKendree*, 203 U. S. 514, the Court said (p. 529):

> "For aught that appears upon the face of the order, the Secretary intended it to apply to all commerce, and whether he would have made such an order, if strictly limited to interstate commerce, we have no means of knowing. The order is in terms single, and indivisible."

and held the order to be void. Therefore, neither this Court nor the District Court may substitute its determination for the erroneous determination of the Postmaster General. Instead, the illegal fraud order must be enjoined in its entirety.

Petitioner may not modify the void fraud order: Being illegal because predicated upon unconstitutional Code Provisions, the fraud order is a nullity which may not be modified by the Postmaster General to save it under any procedure.

The impounded funds belong to respondents: The funds impounded by the District Court (only qualifying fees received after "2:30 P. M. October 19, 1945" (R. 45)) were first delivered by the postal authorities to each respondent to whom the envelopes were addressed, or to its, his or her agent, and were then deposited by all respondents, or their agents, with the Clerk of the District Court under a court order requiring the deposit by "plaintiffs and their agents" of the funds "with a list of the names and addresses of the persons who remitted such qualifying fees." (R. 45). Necessarily involved in this case is the right of respondents to have all the impounded funds returned to them, as plaintiffs, if the fraud order is illegal for any reason or the code provisions under which it was issued are unconstitutional. This substantial right of respondents cannot be taken away from them in the midst of the litigation by any *ex parte* modification of the fraud order, purporting to eliminate from the order parties who are respondents in the case now before this Court. The Court must determine the rights of all the parties under the record now before it, giving consideration to ownership of the funds impounded by the District Court, and being held "pending the further order" of that court (R. 45, 56-7). Approximately $51,000.00 are held under the impounding order. The fraud order does not purport to prohibit Facts Magazine from determining the winners and remitting prizes to the successful contestants, and, the contest having terminated on October 27, 1945 (R. 25), prizes have been awarded and delivered to contestants to the extent of the financial resources of Facts Magazine which was forced into bankruptcy after the impounding of its funds due largely to the adverse publicity and enforced isolation resulting from the fraud order. Contestants having enjoyed the benefits of their rights to win prizes cannot be entitled to the return of the impounded funds.

Recent attempt by petitioner to modify void order is a nullity: On December 8, 1947 the Postmaster General by a void *ex parte* order purported to modify the void fraud order here under attack, by striking therefrom "Facts Magazine; Henry Walsh Lee, Editor-in-Chief, Facts Magazine, and their officers and agents as such."

Petitioner may not, by such ruse, "evade or forestall a decision adverse" to him. See *Norwegian Nitrogen Products Co.* v. *Tariff Commission*, 274 U. S. 106, 112. Likewise, petitioner may not dodge and evade prejudicial answers to the constitutional questions propounded by the Court in its order of November 17, 1947. It is well established law that cases concededly otherwise moot will be dismissed only when the party so claiming is without fault in removing the subject matter of the litigation from the jurisdiction of the Court. *American Book Co.* v. *Kansas*, 193 U. S. 49; *United States* v. *Hamburg-American Co.*, 239 U. S. 466, 477; *United States* v. *Trans-Missouri Freight Asso.*, 166 U. S. 290. Furthermore, under the principle applied in numerous decisions of this Court and various Circuit Courts of Appeal, the December 8th order of petitioner does not, as the Government contends (brief, p. 3), restrict the pertinency of the problems raised by this Court's order of November 17, 1947 or remove these issues of public interest from the case. *So. Pac. Terminal Co.* v. *Int. Comm. Comm.*, 219 U. S. 498, 514-515; *McGrain* v. *Daugherty*, 273 U. S. 135, 182; *Federal Trade Commission* v. *Goodyear Tire & Rubber Co.*, 304 U. S. 257; *Spreckels Sugar Co.* v. *Wickard*, 131 F. (2d) 12, 14-15; *Walling* v. *Haile Gold Mines Inc.*, 136 F. (2d) 102, 105 and *Walling* v. *Mutual Wholesale Food & Supply Co.*, 141 F. (2d) 331, 334-335. The attempt to eliminate the specified parties from the fraud order is an admission that the Code Provisions and the original fraud order are illegal and void because they are *too broad* in their coverage. On Page 2 of the Supplemental Memorandum filed by the Solicitor General in December 1947, he states:

"Prior to this Court's order of November 17 ordering reargument no question as to the scope of the fraud order here involved had been presented to the Postmaster General. Upon consideration of that question as a result of this Court's order, the Acting Postmaster General has concluded that the original order, which shut off *all* mail addressed to the magazine, its editor-in-chief, and its other officers and agents, *was unduly broad.*" (Emphasis supplied.)

New rules established by petitioner do not affect constitutional issues: Recent rules established by the petitioner, after questions were propounded by this Court, do not validate the unconstitutional code provisions, do not observe the constitutional rights of respondents here in issue, and do not modify the indefinite duration of the fraud order under attack.

On November 20, 1947 (12 Fed. Reg. 7942-7944) the Postmaster General issued rules applicable in the future to cases arising under the postal fraud statutes. Section 51.28 of the rules provide for revocation and modification of fraud orders upon application therefor by any person or concern against whom a fraud order has been issued. The applicant must swear "that the *unlawful* enterprise against which the order is directed is no longer being conducted under the name or names sought to be relieved of the provisions of the order, *and* that the *unlawful scheme* will not be resumed in the future under such names or any other names." (Emphasis supplied). It thus appears that a party or concern must admit the *past* and *future illegality* of an "enterprise" previously branded as "unlawful" under a prior fraud order in order to apply for a revocation or modification thereof. If the "enterprise" against which the order was directed is honestly believed by the party or concern to be a "lawful" one and one that would be desirable to be resumed in the future, the necessary application under oath could not be made. The rule requires

a party or concern to give up his or its legal rights in order to contest the validity of a fraud order in the courts as a condition of obtaining any administrative relief in the meantime. Certainly no such rule can have any *retroactive* effect, so as automatically to limit the indefinite duration of the order here under attack or to limit the rights of respondents in the instant case to have this Court declare the code provisions and order invalid.

In the words of Justice BRANDEIS in *Milwaukee Pub. Co. v. Burleson, supra*: "It is no bar to proceedings to set aside an illegal sentence, that an application to the Executive for clemency might have resulted in a pardon." Furthermore, until November 26, 1947 (date of publication of new rules in Federal Register) no procedure was established whereby application could have been made for administrative relief from the fraud order under attack in the instant case. In other words, no application for executive clemency could have been made when respondents initiated their suit to enjoin the illegal order.

Future protection of the public requires action by the Court: Unless this Court passes on the validity of the code provisions and fraud order, there can be no assurance that petitioner will not issue an identical illegal order should respondents or others begin a new puzzle contest. In such event, respondents and the public will be at the mercy of petitioner until new litigation can be initiated and carried through all the courts. This Court should protect respondents from such eventuality. Furthermore, petitioner may revoke the new rules at his pleasure, thereby leaving respondents and the public in the same position they were in before the new rules were promulgated.

Any order whether modified or not can now operate only as a previous restraint upon future conduct of respondents. They are not *now* conducting a fraudulent enterprise. There is no indication that they intend to conduct one. There is therefore no such "clear and present

danger" as would warrant the present imposition of a previous restraint upon them.

Even now although the Postmaster General is fully aware that the instant contest has long since terminated, he seeks to impose a restraint upon the future activities of respondents. If he were disposed to follow his stated principles of vacating orders which can no longer prevent fraud, he would have vacated the order in full.

CONCLUSION

For the reasons stated, it is respectfully submitted that (1) the Code Provisions under which the fraud order was issued are unconstitutional; (2) the illegal fraud order may not be modified to free it from statutory and constitutional objections; (3) the fraud order is void because arbitrary, capricious and not supported by any substantial evidence and, (4) the judgment below should be affirmed.

December, 1947.

Mac Asbill,
W. Lawrence Keitt,
John W. Burke, Jr.,
Counsel for Respondents.

SUPREME COURT OF THE UNITED STATES

No. 50.—October Term, 1947.

Jesse M. Donaldson, Individually and as Postmaster General of the United States, Petitioner, *v.* Read Magazine, Inc., Literary Classics, Inc., Publishers Service Co., Henry Walsh Lee, and Judith S. Johnson.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 8, 1948.]

Mr. Justice Black delivered the opinion of the Court.

This case presents questions as to the validity of an order issued by petitioner, the Postmaster General, which directed that mail addressed to some of respondents be returned to the senders marked "Fraudulent," and that postal money order sums payable to their order be returned to the remitters.

The respondent Publishers Service Company has conducted many contests to promote the circulation of newspapers in which it has advertised that prizes would be given for the solution of puzzles. Through its corporate subsidiaries, respondents Literary Classics, Inc., and Read Magazine, Inc., it publishes books and two monthly magazines called *Read* and *Facts*. The place of business is in New York City.

In 1945 respondents to promote sales of their books put on a nationally advertised project, known as the Facts Magazine Hall of Fame Puzzle Contest. The Postmaster General after a hearing found "upon evidence satisfactory to him" that the "puzzle contest" was "a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, rep-

resentations, and promises, in violation of sections 259 and 732 of title 39, United States Code . . . ." Specifically, the Postmaster General found that the representations were false and fraudulent for two principal reasons. First, that prospective contestants were falsely led to believe that they might be eligible to win prizes upon payment of $3 as a maximum sum when in reality the minimum requirement was $9, and as it later developed they were finally called on to pay as much as $42 to be eligible for increased prize offers. Second, the Postmaster General found that though the contest was emphasized in advertisements as a "puzzle contest" it was not a puzzle contest; that respondents knew from experience that the puzzles were so easy that many people would solve all the "puzzles" and that prizes would be awarded only as a result of a tie-breaking letter-essay contest; and that contestants were deliberately misled concerning all these facts by artfully composed advertisements.

The contest was under the immediate supervision of respondents Henry Walsh Lee and Judith S. Johnson, editor-in-chief and "contest editor" respectively of *Facts*. The Postmaster General's original fraud order related to mail and money orders directed to

> "Puzzle Contest, Facts Magazine; Contest Editor, Facts Magazine; Judith S. Johnson, Contest Editor; Miss J. S. Johnson, Contest Editor; Contest Editor; Facts Magazine; and Henry Walsh Lee, Editor in Chief, Facts Magazine, and their officers and agents as such, at New York, New York."

Respondents filed a complaint in the United States District Court for the District of Columbia to enjoin enforcement of the order. They alleged its invalidity on the grounds that there was no substantial evidence to support the Postmaster General's findings of fraud, and that the statutory provisions under which the order

was issued authorize the Postmaster General to act as a censor and hence violate the First Amendment. The District Court issued a temporary restraining order but directed that pending further orders respondents should deposit in court all moneys and the proceeds of all checks and money orders received through the mails as qualifying fees for the Hall of Fame Puzzle Contest. After a hearing the respondents' motion for summary judgment was granted on the ground that the findings were not supported by substantial evidence. 63 F. Supp. 318. The United States Court of Appeals for the District of Columbia affirmed on the same ground, one judge dissenting. 158 F. 2d 542. We granted certiorari.

The case has been twice argued in this Court. Briefs of both parties on the first argument dealt only with the question of whether the Postmaster General's findings of fraud were supported by substantial evidence. But assuming validity of the findings, questions arose during the first oral argument concerning the scope of the fraud order. That order had included a direction to the New York postmaster to refuse to deliver any mail or to pay any money orders to *Facts*, its officers and agents, including its editor in chief, who was also editor of *Read*. The two monthly magazines, both published in New York, had an aggregate circulation of nearly five hundred thousand copies. We were told the total deprivation of the right of *Facts* and of the editor of the two magazines to receive mail and to cash money orders would practically put both magazines out of business. See *Milwaukee Publishing Co.* v. *Burleson*, 255 U. S. 407. Furthermore, the order was of indefinite duration and *Facts* and its affiliates have made a business of conducting contests to promote the circulation of books and magazines. The order, if indefinitely enforced, might have resulted in barring delivery of mail and payment of money orders in relation to other non-fraudulent con-

tests as well as legitimate magazine business. All of the foregoing raised questions about the validity and scope of the original order, if unmodified, which we deemed of sufficient importance to justify further argument. For that reason we set the case down for reargument, requesting parties to discuss the validity and scope of the order, and whether, if invalid by reason of its scope, it could be so modified as to free it from statutory or constitutional objections.[1]

Thereafter, and before reargument, the Postmaster General revoked the order insofar as it applied to *Facts* magazine, its editor-in-chief, and its officers and agents. As modified, the order bars delivery of mail and payment

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[1] "This case is ordered restored to the docket for reargument. On reargument counsel need not further discuss the sufficiency of the evidence to support the Postmaster General's findings. They are requested to discuss the following:

1. Does the fraud order prohibit delivery of mail and postal money orders to Facts Magazine and all its employees, including its editor-in-chief? If so,

(a) Is the order within the Postmaster General's authority under 39 U. S. C. Secs. 259, 732?

(b) If so, do these code provisions, in violation of the First Amendment or any other constitutional provisions, abridge the freedom of speech or press of either the senders or the sendees of the mail or the money orders?

2. Does the fraud order prohibit indefinitely the delivery of mail or money orders which relate to subject matters or contests other than the contest on which the order is based? If so,

(a) Is the order within the Postmaster General's statutory authority?

(b) If so, are these code provisions in conflict with the Constitution of the United States?

3. Assuming that the order is in conflict with the code provisions or the Constitution, can it be modified in such way as to free it from statutory or constitutional objections? If so, by whom can the order be modified and by what procedure?" 332 U. S. —.

of money orders only to addressees designated in the contest advertisements:

> "Puzzle Contest, Facts Magazine; Contest Editor, Facts Magazine; Judith S. Johnson, Contest Editor; Miss J. S. Johnson, Contest Editor; Contest Editor."

The Postmaster General, so we are informed, does not construe the modified order as forbidding delivery of mail or payment of money orders to *Facts* magazine or even to Miss Judith (J. S.) Johnson, individually. So construed, the order is narrowly restricted to mail and money orders sent in relation to the Hall of Fame Puzzle Contest found fraudulent, and would not bar deliveries to the magazines, to their editor, or to the three corporate respondents. It would bar deliveries to Judith (J. S.) Johnson, only if sent to her at the designated address and in her capacity as "Contest Editor." Likewise the District Court's order impounding funds is limited to qualifying fees received in the Hall of Fame Puzzle Contest. If the Postmaster General's action in modifying the order is valid, the questions we asked to have argued have largely been eliminated from the original order.

Respondents' contentions now are: (1) The Postmaster General lacked power to modify his original fraud order, and hence that order remains subject to any and all of its original infirmities. (2) The findings on which the order is based are not supported by substantial evidence. (3) The statutes under which the order was issued violate various constitutional provisions.

First. Respondents' contention that the Postmaster General was without power to modify the order by elimination of *Facts* magazine, its editor, and its officers and agents is based almost entirely on their two other grounds for asserting invalidity of the order. Of course, if the order were wholly invalid as to all of the respond-

ents for these reasons, it could not have been validated merely by eliminating some of them from its terms. But laying aside respondents' other contentions for the moment, we have no doubt as to the Postmaster General's authority to modify the fraud order.

Having concluded that the original order was broader than necessary to reach the fraud proved, the Postmaster General not only possessed the power but he had the duty to reduce its scope to what was essential for that purpose. The purpose of mail fraud orders is not punishment, but prevention of future injury to the public by denying the use of the mails to aid a fraudulent scheme. See *Comm'r* v. *Heininger*, 320 U. S. 467, 474. Such orders if too broad could work great hardships and inflict unnecessary injuries upon innocent persons and businesses. No persuasive reason has been suggested why the Postmaster General should be without power to modify an order of this kind. Such an order is similar to an equitable injunction to restrain future conduct, and like such an injunction should be subject to modification whenever it appears that one or more of the restraints imposed are no longer needed to protect the public. *United States* v. *Swift & Co.*, 286 U. S. 106, 114; see *Skinner & Eddy Corp.* v. *United States*, 249 U. S. 557, 570.

Furthermore, the modification here involved was for respondents' benefit; it gave them a part of the very relief for which they prayed. It removed the ban against delivery of mail and payment of money orders to their magazine, its editor and its agents—a ban which we were told would have done them irreparable injury if left in effect. The possibility that another order might be entered against the eliminated respondents is too remote to require us to consider the original order as though the modification had never been made. See *United States* v.

Hamburg-American Steamship Co., 239 U. S. 466, 475–476.

Nor does the modification subject respondents to any disadvantage in this case in reference to the impounded funds. Those funds are sums sent in as qualifying fees for the scheme found fraudulent. They are in court custody because of the court's restraining order; but for it they would have been returned to the senders as ordered by the Postmaster General. Now, as before the fraud order was modified, their disposition is dependent entirely upon the validity of the finding of fraud. Respondents could thus claim the funds only by asserting a right growing out of the scheme found fraudulent. The court having lawful command of such funds must allocate them to the remitters if the order is valid. See *Inland Steel Co.* v. *United States*, 306 U. S. 153, 156–158; *United States* v. *Morgan*, 307 U. S. 183, 194–195.

Second. Respondents contend that there was no substantial evidence to support the Postmaster General's findings that they had represented that prizes could be won (1) on payment of only three dollars as contest fees or (2) by the mere solution of puzzles. They say that the very advertisements and circular letters to contestants from which these inferences were drawn by the Postmaster General contained language which showed that the first $3 series of puzzles might result in ties, making necessary a second and maybe a third $3 puzzle series, and that if these three efforts failed to determine the prize winners, they would then be selected on the basis of competitive letters, written by the tied contestants on the subject "The Puzzle I Found Most Interesting and Educational in This Contest."

There were sentences in the respondents' advertisements and communications which, standing alone, would have conveyed to a careful reader information as to the

nine-dollar fees and the letter essay feature of the contest. Had these sentences stood alone, doubtless the fraud findings of the Postmaster General would not have been justified. But they did not stand alone. They were but small and inconspicuous portions of lengthy descriptions used by respondents to present their contest to the public in their advertisements and letters. In reviewing fraud findings of the Postmaster General, neither this Court nor any other is authorized to pick out parts of the advertisements on which respondents particularly rely, decide that these excerpts would have supported different findings, and set aside his order for that reason. We consider all the contents of the advertisements and letters, and all of the evidence, not to resolve contradictory inferences, but only to determine if there was evidence to support the Postmaster General's findings of fraud. *Leach* v. *Carlile*, 258 U. S. 138, 140.

Respondents' advertisements were long; their form letters to contestants discussing the contest, its terms, and its promises were even longer than the advertisements. Paradoxically, the advertisements constituted at the same time models of clarity and of obscurity—clarity in referring to prizes and to a "puzzle contest," obscurity in referring to a remote possibility of a letter-essay contest. In bold type, almost an inch high, their advertisements referred to "$10,000 FIRST PRIZE PUZZLE CONTEST." Time after time they used the words "puzzle" and "puzzle contest." Conspicuous pictures of sample "puzzles" covered a large part of a page. Rebus "puzzles" Nos. 1 to 4 of the contest were there. An explanation of what each represented appeared above it. The first, it was explained, represented "the inventor of the phonograph and electric light," the second "a Republican President who became Chief Justice of the Supreme Court." The last two contained equally helpful clues to the "puzzles." The advertisements left no doubt that the contest

presented an opportunity to win large prizes in connection with solution of puzzles, which puzzles, to say the least, would not be too taxing on the imagination.

Readers who might have felt some reluctance about paying their money to enter an essay contest were not so impressively and conspicuously informed about that prospect; here the advertisement became a model of obscurity. In the lower left corner of one of the advertising pages appeared the "Official Rules of the Contest," to which rules references were carefully placed in various parts of the advertisement, and which were printed, as the District Court's opinion observed, "in small type." There were ten rules. About the middle of Rule 9 appeared the only reference to the possible need for letters as a means of breaking ties. And it is impossible to say that the Postmaster General drew an unreasonable inference in concluding that competitive letter-writing thus obscurely referred to was mentioned only as a remote and unexpected contingency. The same kind of obscurity and doubt occurs in reference to the cost of the contest. The District Court in an opinion holding that the Postmaster General's findings were not supported by the evidence had this to say about one advertisement which was widely used:

> "Indeed, the advertisement is by no means a model of clarity and lucidity. It is diffuse and prolix, and at times somewhat obscure. Many of its salient provisions are printed in rather small type. An intensive and concentrated reading of the entire text is indispensable in order to arrive at an understanding of the entire scheme. Nevertheless, a close analysis of this material discloses the complete plan. Nothing is omitted, concealed or misrepresented. There is no deception. The well-founded criticisms of the plaintiff's literature are a far cry from justifying a conclusion that the announcement was a fraud on

the public . . . . The conclusion is inevitable that there is no evidence to support the finding of fact on which the fraud-order is based and that, therefore, the plaintiff is entitled to a permanent injunction against the enforcement of the order."

We agree with the District Court that many people are intellectually capable of discovering the cost and nature of this contest by "intensive and concentrated reading" and by close analysis of these advertisements. Nevertheless, we believe that the Postmaster General could reasonably have concluded, as he did, that the advertisements and other writings had been artfully contrived and composed in such manner that they would confuse readers, distract their attention from the fact that the scheme was in reality an essay contest, and mislead them into thinking that they were entering a "rebus puzzle" contest, in which prizes could be won by an expenditure of not more than $3. That respondents' past experience in similar contests enabled them to know at the beginning that essay writing, not puzzle solutions, would determine prize winners is hardly controvertible on this record. That experience was borne out in this contest by the fact that of the 90,000 contestants who submitted answers to the first series of 80 puzzles, 35,000 solved all of them, and of that number 27,000 completed the first set of "tie-breaking puzzles" when the fraud order was issued. Under the circumstances, to advertise this as a puzzle contest instead of what it actually was cannot be attributed to a mere difference in "nomenclature"; such conduct falls far short of that fair dealing of which fraud is the antithesis.

Advertisements as a whole may be completely misleading although every sentence separately considered is literally true. This may be because things are omitted that should be said, or because advertisements are composed or purposefully printed in such way as to mislead. *Wiser*

v. *Lawler*, 189 U. S. 260, 264; *Farley* v. *Simmons*, 99 F. 2d 343, 346; see also cases collected in 6 Eng. Rul. Cas. 129–131. That exceptionally acute and sophisticated readers might have been able by penetrating analysis to have deciphered the true nature of the contest's terms is not sufficient to bar findings of fraud by a fact-finding tribunal. Questions of fraud may be determined in the light of the effect advertisements would most probably produce on ordinary minds. *Durland* v. *United States*, 161 U. S. 306–313, 314; *Wiser* v. *Lawler*, *supra* at 264; *Oesting* v. *United States*, 234 F. 304, 307. People have a right to assume that fraudulent advertising traps will not be laid to ensnare them. "Laws are made to protect the trusting as well as the suspicious." *Federal Trade Comm'n* v. *Standard Education Society*, 302 U. S. 112, 116.

The Postmaster General found that respondents' advertisements had been deliberately contrived to divert readers' attention from material but adroitly obscured facts. That finding has substantial support in the evidence. The District Court and the Court of Appeals were wrong in holding the evidence insufficient.

Third. It is contended that §§ 259 and 732 of 39 U. S. C., the sections under which this order was issued, are in conflict with various constitutional provisions and that the statutes should be held unenforceable for this reason. Specifically, it is argued that the sections authorize a prior censorship and thus violate the First Amendment; authorize unreasonable searches and seizures in violation of the Fourth Amendment; violate the due process clause of the Fifth Amendment; deny the kind of trial guaranteed in criminal proceedings by the Sixth Amendment and by Art. III, § 2, cl. 3; and inflict unusual punishment in violation of the Eighth Amendment.

In 1872 Congress first authorized the Postmaster General to forbid delivery of registered letters and payment of

money orders to persons or companies found by the Postmaster General to be conducting an enterprise to obtain money by false pretenses through the use of the mails. 17 Stat. 322–323, 39 U. S. C. § 732. In the same statute Congress made it a crime to place letters, circulars, advertisements, etc., in the mails for the purpose of carrying out such fraudulent artifices or schemes. 17 Stat. 323, 18 U. S. C. § 338. In 1889 Congress declared "non-mailable" letters and other matters sent to help perpetrate frauds. 25 Stat. 874, 39 U. S. C. § 256. In 1895 the Postmaster General's fraud order powers were extended to cover all letters or other matters sent by mail. 28 Stat. 964, 39 U. S. C. § 259. And Congress has passed many more statutes, such, for illustration, as the Securities and Exchange Act, 48 Stat. 77, 906, 15 U. S. C. § 77 (e), and the Federal Trade Commission Act as amended, 52 Stat. 114, 15 U. S. C. § 52, to protect people against fraudulent use of the mails.

All of the foregoing statutes, and others which need not be referred to specifically, manifest a purpose of Congress to utilize its powers, particularly over the mails and in interstate commerce, to protect people against fraud. This governmental power has always been recognized in this country and is firmly established. The particular statutes here attacked have been regularly enforced by the executive officers and the courts for more than half a century. They are now a part and parcel of our governmental fabric. This Court in 1904, in the case of *Public Clearing House* v. *Coyne*, 194 U. S. 497, sustained the constitutional power of Congress to enact the laws. The decision there rejected all the contentions now urged against the validity of the statutes in their entirety, insofar as the present contentions have any possible merit. No decision of this Court either before or after the *Coyne* case has questioned the power of Congress to pass these

laws. The *Coyne* case has been cited with approval many times.

Recognizing that past decisions of this Court if adhered to preclude acceptance of their contentions, respondents urge that certain of our decisions since the *Coyne* case have partially undermined the philosophy on which it rested. Respondents refer particularly to comparatively recent decisions under the First and Fourteenth Amendments.[2] None of the recent cases to which respondents refer, however, provide the slightest support for a contention that the constitutional guarantees of freedom of speech and freedom of the press include complete freedom, uncontrollable by Congress, to use the mails for perpetration of swindling schemes.

We reject the contention that we should overrule the *Coyne* case and declare these fraud order statutes to be wholly void and unenforceable.

An additional argument urged by respondents is that the fraud order statutes as interpreted and applied by the Postmaster General in this case violate some of the constitutional provisions above mentioned. We consider this suggestion only in connection with the modified order. Its future effect is merely to enjoin the continuation of conduct found fraudulent. Carried no further than this, the order has not even a slight resemblance to punishment—it only keeps respondents from getting the money of others by false pretenses and deprives them of a right to speak or print only to the extent necessary to protect others from their fraudulent artifices. And so far as the impounding order is concerned, of course respondents can have no just or legal claim to money

[2] *Grosjean* v. *American Press Co.*, 297 U. S. 233, 245–249; *Near* v. *Minnesota*, 283 U. S. 697, 713, *et seq.*; *Bridges* v. *California*, 314 U. S. 252, 260–263; *Craig* v. *Harney*, 331 U. S. 367; *Milwaukee Publishing Co.* v. *Burleson*, 255 U. S. 407.

mailed to them as a result of their fraudulent practices. Nor does the modified order jeopardize respondents' magazine except to the extent, if any, that its circulation might be dependent on monies received from this contest scheme found fraudulent. A contention cannot be seriously considered which assumes that freedom of the press includes a right to raise money to promote circulation by deception of the public.

The order as modified is valid and its enforcement should not have been enjoined. The judgments of the United States Court of Appeals for the District of Columbia and of the District Court are reversed. The cause is remanded to the District Court to dismiss the petition for injunction and to provide for proper return to the remitters of the impounded funds sent in response to the fraudulent advertisements and communications.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 50.—October Term, 1947.

Jesse M. Donaldson, Individually and as Postmaster General of the United States, Petitioner,
v.
Read Magazine, Inc., Literary Classics, Inc., Publishers Service Co., Henry Walsh Lee, and Judith S. Johnson.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 8, 1948.]

Mr. Justice Burton, with whom Mr. Justice Douglas concurs, dissenting.

The two lower courts reviewed in detail the facts in this case. Both held that the predecessor of the present Postmaster General exceeded his authority in issuing his stringent order of October 1, 1945. The modification of that order on December 8, 1947, by the present Postmaster General, then serving as Acting Postmaster General, has restricted it to appropriate parties. It has not altered, however, the primary basis for the lower court's injunction of November 27, 1945, against the enforcement of the order. That injunction was granted because the record failed to show evidence sufficient to justify the drastic administrative action taken in reliance upon the lottery and fraud sections of the mail and money order statutes. R. S. §§ 3929 and 4041, as amended, 26 Stat. 466, 28 Stat. 964; 39 U. S. C. §§ 259 and 732. This dissent protests the overruling of the conclusions of the lower courts on this issue and seeks especially to discourage any increase, or even repetition, of the degree of censorship evidenced by this order.

The former Postmaster General applied here the drastic summary police powers entrusted to his office by Congress

to deal with fraudulent swindlers using the mail in the conduct of lotteries or any other scheme for obtaining money by false or fraudulent pretenses. No charge of a lottery or scheme of chance was made the basis for the order before us. This particular puzzle and letter-writing contest, to which the order was limited, was a contest of the familiar type which offers prizes and thereby seeks to attract prospects for later sales. The sponsor candidly stated that this contest was conducted for advertising purposes and it distributed to the contestants samples from a series of books published by its subsidiary, Literary Classics, Inc. The entrance fees of 15 cents, required to accompany the respective sets of puzzle solutions, might well add up to more than all the expenses of the program, including the substantial prizes, provided the responses were many. Such fees, however, would fail to meet those expenses if the responses were few. The financial success of the contest depended upon the number of volunteers choosing to enter it.

The District Court found:

> "'These considerations, ... do not justify an inference of fraud. Under no circumstances, therefore, can the puzzle contest and its descriptive literature be considered a fraudulent device or strategem [stratagem] for obtaining money. The conclusion is inevitable that there is no evidence to support the finding of fact on which the fraud order is based and that, therefore, the plaintiff is entitled to a permanent injunction against the enforcement of the order." *Read Magazine* v. *Hannegan*, 63 F. Supp. 318, 322.

The Court of Appeals found:

> "Appellant does not claim that any statement in the advertisements was untrue or that there was any departure from the procedure announced in the Offi-

cial Rules of the Contest. There is no claim by him that the judging of the letters was to be other than bona fide, or that any contestant failed to receive the promised books. No contestant, so far as the record shows, complained of being misled or defrauded. In other words, the fraud order is not premised upon specific or affirmative misstatements, or upon failure to perform as promised, but is premised upon an impression which appellant says is conveyed by the advertisements as a whole. He derives the impression from the headlines in the advertisements and the comparative urgency which he finds in some of the expressions in them.

"To support appellant's conclusion in this case, one must ascribe to the advertisements an impression directly contrary to the stated rules of the contest. One must thus assume that readers were led not to read the Rules, or were led to ignore them or to misunderstand them or to believe something else contrary to their statement. There is no evidence, we think, to support any of those assumptions. The Rules were legibly printed. They were emphasized, rather than minimized, in the text. They were clear to any reasonable mind. No contradictory expressions occurred elsewhere.

"That this contest was an advertising device designed to promote the book-publishing business of appellees must have been plain to the most casual reader. The advertisements specifically told him, 'This contest with FACTS MAGAZINE as sponsor is being presented as a means of popularizing the Literary Classics Book Club.' . . .

"We fail to see that the letters which were written to the contestants who successfully solved the first

series of puzzles, cast any complexion upon the venture different from that cast by the original advertisements themselves.

"We think that the advertisements before us fairly urged contestants to read the Rules and that the Rules stated fairly, in style of type, placement, and terms, what was proposed. That being so, and there being no ambiguity in or departure from the proposals stated, a finding of false pretenses, representations, or promises could not properly be made." *Hannegan* v. *Read Magazine*, 158 F 2d 542, 544, 545–546.

Not only do I fail to find adequate reason to overrule the findings and conclusions of the two lower courts but, on examination of the record, I agree with them. I believe that the Postmaster General exceeded his authority when he applied his drastic censorship and fraud order to this particular program. There was no compulsion on anyone to enter this contest. Everyone who did so received, as advertised, certain reprints of classical literature and, until the contest was stopped, each contestant had the advertised opportunity to win certain cash prizes.

Anyone who entered this contest to win substantial prizes by doing so little to win them should at least examine the exact terms of the contest and make himself responsible for meeting the rules prescribed by those offering to make the gifts he sought. The contestants rendered no services for which they had a right to compensation. They merely paid a small entrance fee. For that they were entitled to have the contest conducted in accordance with the rules stated.

The findings of the lower courts make it clear that there has been no claim of failure or impending failure by the sponsor to carry out the terms of the contest. The record

shows no complaint from any contestant. Nevertheless, the Postmaster General took it upon himself to stop the contest. On the evidence before him and before the courts, this was an abuse of his discretion. It was "palpably wrong and therefore arbitrary." See *Leach* v. *Carlile*, 258 U. S. 138, 140.